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ROYAL COMMISSION OF INQUIRY INTO CERTAIN
DEATHS AT THE HOSPITAL FOR SICK CHILDREN AND
RELATED MATTERS.

Hearing held
21st floor
180 Dundas Street West
Toronto, Ontario

The Honourable Mr. Justice S.G.M. Grange	Commissioner
P.S.A. Lamak, Q.C.	Counsel
E.A. Cronk	Associate Counsel
Thomas Millar	Administrator

Transcript of evidence
for

4 June, 1984

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1 ROYAL COMMISSION OF INQUIRY INTO CERTAIN
2 DEATHS AT THE HOSPITAL FOR SICK CHILDREN
3 AND RELATED MATTERS.

4 Hearing held on the 21st Floor,
5 180 Dundas Street West, Toronto,
6 Ontario, on Monday, the 4th day
7 of June, 1984.

8
9 THE HONOURABLE MR. JUSTICE S.G.M. GRANGE - Commissioner
10 THOMAS MILLAR - Administrator
11 MURRAY R. ELLIOT - Registrar

12 APPEARANCES:

13 P.S.A. LAMEK, Q.C.) Commission Counsel
14 E. CRONK)
15 D. HUNT) Counsel for the Attorney
16 L. CECCHETTO) General and Solicitor
17 B. PERCIVAL, Q.C.) General of Ontario (Crown
18 D. YOUNG) Attorneys and Coroner's
19 W.N. ORTVED) Office)
20 K. CHOWN) Counsel for numerous
21 F. KITELY) Doctors at The Hospital
22) for Sick Children
23 D. BROWN) Counsel for the Registered
24) Nurses Association of
25) Ontario and 35 Registered
Nurses at The Hospital for
Sick Children
Counsel for Susan Nelles -
Nurse

(Cont'd)....



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2 APPEARANCES: (Cont'd)

3 G.R. STRATHY) Counsel for Phyllis Trayner -
Nurse
4
5 J. OLAH) Counsel for Janet Brownless -
Nurse
6 S. LABOW) Counsel for Mr. & Mrs. Gosselin,
Mr. & Mrs. Gionas, Mr. & Mrs.
Inwood, Mr. & Mrs. Turner, Mr.
& Mrs. Lutes, and Mr. & Mrs.
Murphy (Parents of deceased
children)
7
8
9 F.J. SHANAHAN Counsel for Mr. & Mrs. Dominic
10 Lombardo (parents of deceased
child Stephanie Lombardo); and
11 Heather Dawson (mother of
deceased child Amber Dawson)
12 W.W. TOBIAS Counsel for Mr. & Mrs. Hines
(parents of deceased child
Jordan Hines)
13
14 J. SHINEHOFT Counsel for Lorie Pacsai and
15 Kevin Garnet (parents of
deceased child Kevin Pacsai)
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VOLUME 148



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2

E R R A T A

3

VOLUME 145

4

Page 3358, line 22: reads "receive" should read
"leave"

5

Page 3389, line 17: reads "tach" should read "tet"

6

Page 3432, line 9: reads "start digoxin" should read
"stop digoxin"

7

Page 3492, line 21: reads "he" should read "you"

8

9

10

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12

VOLUME 146

13

Page 3530, line 20: reads "associated" should read
"associate"

14

Page 3537, line 15: reads " own their sauces"
should read "and their sauces"

15

Page 3539, line 18: reads "position order" should
read "physician order"

16

Page 3551, line 8: reads "can't perform to X"
should read "can perform to X"

17

Page 3627, line 3: reads "required to stat" should
"required stat"

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I N D E X

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ARGUMENT BY MR. LAMEK

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I N D E X O F E X H I B I T S

9

<u>NO.</u>	<u>Description</u>	<u>PAGE NO.</u>
10 420	Amending Order-in-Council	2
11 421	Letter from Dr. DeSa	123
12 422	Coroner's investigation statements	124

13

14

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16

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2 ---On commencing at 10:00 a.m.

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THE COMMISSIONER: Yes, Mr. Lamek?

MR. LAMEK: I thought, Mr. Commissioner, you were first going to read the decision on the argument?

6

THE COMMISSIONER: Yes. I am certainly going to do that. I thought the first thing, though, was to handle the Phase II problem, was it not?

10

MR. LAMEK: Whatever you say, sir.

THE COMMISSIONER: I think what I would like to do first is to get Phase II out of the way for the time being, and I think we should have - you haven't the formal Order-in-Council?

14

MR. LAMEK: No.

15

THE COMMISSIONER: We should have a copy and then we can deal with standing.

11

MR. LAMEK: You are absolutely right, Mr. Commissioner. I do not yet have a signed copy of the amending Order-in-Council, but I sent to all Counsel a copy of the unsigned version. And perhaps for the time being in order that argument as to standing may have some standing, I could file the unsigned copy as the next exhibit, please.

23

THE COMMISSIONER: All right. The

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2 amendment, and we will substitute the signed one when
3 we get it, the amendment to the Order-in-Council.

4 MR. PERCIVAL: What is the number,
5 Mr. Commissioner?

6 THE COMMISSIONER: 420.

7 MR. PERCIVAL: Thank you.

8 ---EXHIBIT NO. 420: Amending Order-in-Council

9
10 THE COMMISSIONER: We have not had
11 any chance to discuss that I read in the papers that
12 I said we were going on and I read in the papers
13 that Mr. Percival said that's all right by him. Do
14 I have that correctly?

15 MR. PERCIVAL: Yes.

16 THE COMMISSIONER: All right.

17 MR. PERCIVAL: A very excellent
18 paraphrase.

19 THE COMMISSIONER: That being the case
20 I would like to dispose of the standing problem in
21 Phase II, not necessarily today, but I would like to
22 know precisely... Now I don't think there is any
23 question about Susan Nelles, the Attorney General,
24 Metropolitan Police and I really don't think there
25 is much question about the Hospital either, but first
of all, are all of those four seeking standing?



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MR. BROWN: Yes, we are seeking
standing on behalf of Miss Nelles.

4

THE COMMISSIONER: And are you seeking
standing, Mr. Hunt?

6

MR. HUNT: Oh, yes.

7

THE COMMISSIONER: Yes, Mr. Percival.

8

MS. THOMSON: Yes, we are.

9

THE COMMISSIONER: And Miss Thomson.

10

I guess Mr. Lamek has standing too.

Now who else would like standing?

11

MR. ORTVED: I can tell you, Mr. Commissioner, on behalf of the 40 odd doctors whom I am retained to represent that I will be making an application for standing in their behalf.

14

THE COMMISSIONER: Yes. All right.

15

Miss Kitely?

16

MISS KITELY: Mr. Commissioner, on behalf of the 39 individuals we represent and the Registered Nurses Association, I wish to make submissions.

19

THE COMMISSIONER: The doctors and nurses are in a different category, but the Registered Nurses Association, I think in light of what - certainly in light of what Mr. Hunt and Mr. Young have said in camera the other day would not have

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2 any position at all. Now they may, of course, support
3 the individual nurses, but why would they have any right
4 to standing?

5 MISS KITELY: Well, I am prepared to
6 make submissions on both, sir. Do you wish to hear
7 from me now or are you polling --

8 THE COMMISSIONER: I guess you are
9 right. 39 and the Registered Nurses Association.
10 All right. That is probably sensible to just
11 know who it is. Now, Mr. Labow?

12 MR. LABOW: Mr. Commissioner, on behalf
13 of the six families we represent as well as the
14 family of Justin Cook we will be seeking standing
15 in the second phase, and at this point I would also
16 like to ask that we be given standing at this point
17 in Phase I for the family of Justin Cook.

18 We were only contacted last week to
19 ask for standing in this matter.

20 I feel that Commission Counsel has done
21 an exceptional job in going through the evidence
22 regarding the Cook child, but I would like standing
23 and the opportunity to make submissions about that
24 child when we turn to submissions in Phase I.

25 THE COMMISSIONER: There is no extra
evidence I take it?



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2 MR. LABOW: None that I know of.

3 THE COMMISSIONER: You had better
4 know pretty fast.

5 MR. LABOW: We were only retained this
6 morning. I spoke to them late last week.

7 THE COMMISSIONER: Yes. All right.

8 If there is any one, any opposition provided no evidence
9 is called to Mr. Labow acting for the family of Justin
Cook? Well, that certainly - yes, Mr. Shinehoft?

10 MR. SHINEHOFT: No, I have no --

11 THE COMMISSIONER: Well, I will just
12 deal with that, and certainly as far as I am concerned
13 I am happy to have Justin Cook's parents represented
14 by you.

15 I take it that that will mean that you
16 will submit an argument on behalf of him as well as
17 on behalf of your other clients?

18 MR. LABOW: Yes.

19 THE COMMISSIONER: You are able to
20 do that without causing us any delay?

21 MR. LABOW: I hope that is the case.
22 I think I can do that without causing any delay.

23 THE COMMISSIONER: All right. Thank
24 you.

25 Mr. Shinehoft?



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2 MR. SHINEHOFT: Yes. I am making a
3 formal application, Mr. Commissioner, to have standing
4 in Phase II on behalf of my clients.

5

6 THE COMMISSIONER: Yes. All right.
7 I would have said some things to you, but I will wait
8 and we will take them in order as we go along.

9

10 Anyone else seeking standing?

11

12 MR. STRATHY: Yes, Mr. Commissioner.

13

14 For reasons which I would like to have an opportunity
15 to elaborate at some stage, I will be requesting
16 standing on behalf of my client, Mrs. Trayner, during
17 Phase II.

18

19 THE COMMISSIONER: Yes. All right.

20

21 Anyone else?

22

23 I think you have an indication, have
24 you not, Mr. Lamek, that certain counsel are not
25 participating further?

26

27 MR. LAMEK: Yes, I do, sir. I've heard
28 from counsel for Nurse Scott who say they will not
29 be seeking standing, and Mr. Olah has said the same
30 thing for Miss Brownless as has Mr. Knazan and Miss
31 Solomon on behalf of their client, Mrs. Christie.

32

33 THE COMMISSIONER: Then there is Mr.
34 Rosenberg and Mr. Knazan and Miss Solomon. Anyone
35 else?

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2 MR. LAMEK: For Mrs. Christie and
3 therefore the RNAA.

4 THE COMMISSIONER: Yes. All right.
5 Thank you.

6 MR. LABOW: Because Mr. Tobias and
7 Mr. Shanahan aren't here, I can indicate to you in
8 our last discussion Mr. Tobias was going to seek
9 standing for the Hines family and at my last indication
10 Mr. Shanahan was also going to seek standing in
Phase II for the Dawson and the Lombardo families.

11 THE COMMISSIONER: I don't imagine
12 the argument is much different between them and you,
but the problem is --

13 MR. LABOW: I don't imagine.

14 THE COMMISSIONER: - I want to proceed
15 with the argument right now and get it out of the
16 way.

17 MR. LABOW: I expected both of them
18 to be here.

19 THE COMMISSIONER: Yes. All right.

20 Then can I hear if anyone has any
21 objection to the standing of Susan Nelles, the
22 Attorney General, the Police and the Hospital? Is
23 anyone opposed to their having standing? And before
I forget is there anyone else seeking standing who was

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2 not represented in Phase I?

3 All right. In that event we will give
4 standing to Susan Nelles, the Attorney General, the
5 Police and the Hospital, and we won't have to hear
6 from them on that subject.

7 I would like to hear from you, Mr.
8 Ortved, as to why the doctors should have standing.

9 MR. ORTVED: Thank you, Mr. Commissioner.
10 The context in which I put my submissions
11 to you is that delineated by the Public Inquiries Act,
12 and particularly that section permitting that you may
13 allow standing to a party with a direct and substantial
14 interest. It is my submission to you that the doctors
15 whom I represent have that direct and substantial
16 interest.

17 I have provided on a prior occasion a
18 list of the doctors for whom I am retained to act to
19 Commission Counsel, but for the purposes of your
20 understanding my submissions to you today I can tell
21 you that they include, for example, the cardiologists,
22 comprising the Division of Cardiology in the Hospital
23 for Sick Children, a number of pathologists including
24 Dr. Phillips, the Head of Pathology, Hospital for
25 Sick Children, as well as Dr. Hill, for instance, the
head of the Division of Biochemistry, and other doctors



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2 spread throughout the Hospital, comprising doctors in
3 charge of clinical care, the surgeons who performed
4 the surgical procedures on those involved and other
5 doctors otherwise indicated.

6 I suppose one hurdle I have to over-
7 come is a possible perception on your part that the
8 position of the doctors is in no way different from that
9 of the Hospital, and really why is the direct and substantial
10 interest of the doctors not adequately covered by
11 counsel here on behalf of the Hospital. Simply
12 stated --

13 THE COMMISSIONER: There is another
14 problem. As I see it the only problem that the doctors
15 face, and the same thing applies to the nurses, is that
16 it may be alleged that some of them, some of them
17 individually, were not as co-operative as they might
18 have been in the Police investigation.

19 Is there any other conceivable interest
20 that the doctors could have?

21 MR. ORTVED: Well --

22 THE COMMISSIONER: Other than that of
23 the curious interest which is not an interest in law.

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MR. ORTVED: I don't think the doctor's interest in Phase II is so very different from that in Phase I. Our submission to you will be that the doctor's response in the circumstances is adequate and understandable. I think in Phase II it is very conceivable that part of the case on the part of the police that that was not the case.

THE COMMISSIONER: What was not the case?

MR. ORTVED: That their response was both inadequate and not capable of comprehension. In that very context I need refer you, Mr. Commissioner, no further than the meeting that took place at the coroner's office on March the 21st, I believe it was -- March 20th, and the suggestions raised at that time that certain actions were not taken that may be should have been taken.

There is a suggestion that how is it conceivable at this stage that the circumstances concerning the Allana Miller child were not raised for the officials at that meeting and the doctors had given you their clear evidence as to why that was the case and then that had been met.

THE COMMISSIONER: That would apply only, of course, to the doctors who were there, the



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doctors who were at the meeting. It wouldn't apply
to doctors, generally.

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MR. ORTVED: Well, I think to the extent that other doctors were interviewed and that those interviews surfaced in the course of this ensuing inquiry, you may find precisely the same questions were put, so I don't think it can be necessarily limited to just Dr. Rowe and Dr. Fowler, who were present at that meeting.

10

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This is the flavour, in my submission to you, that underlies the whole of Phase I and the whole of Phase II.

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THE COMMISSIONER: What would you want to do with respect to that meeting except to perhaps to protect the reputation of Dr. Rowe and Dr. Fowler? Is there anything else?

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MR. ORTVED: That is the crux, that is the second aspect of my application to you for standing, because we are dealing, firstly, with the position in the laws of these doctors, in the course of events leading up to March 20th or 21st, and the extent to which that is reflected in the evidence, up to that point in time, as well as after, and then, in particular, afterwards we are dealing with the reputations of these doctors and that is a



B-3

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2 very direct and substantial interest. That is what
3 can become an issue in these proceedings as we
4 all now know.

5 THE COMMISSIONER: If you are
6 granted standing what would you suggest your
7 participation should be in Phase II?

8 MR. ORTVED: Well, my participation
9 in Phase II, I am prepared to concede at this point,
10 is probably restricted to questions concerning the
11 clients for whom I act and with the greatest of
12 respect, Mr. Commissioner, that is I think I can
say with some force, the attitude I adopted --

13 THE COMMISSIONER: Yes.

14 MR. ORTVED: -- during the course
15 of Phase I.

16 THE COMMISSIONER: Well, if you take
17 that position it may or may not be so difficult.
18 If you take the position that you are concerned in
19 the fight between Susan Nelles and the police then
it would be very difficult; that is all.

20 MR. ORTVED: Absolutely not. I
21 suppose I would be happiest, just slightly happier
22 than you, if I could go through the whole of Phase
23 II without saying a word, but I am applying for
standing because I am concerned that that might not

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2 be the case.

3 THE COMMISSIONER: Yes.

4 MR. ORTVED: That is the concern
5 of my clients.

6 THE COMMISSIONER: Yes. All right,
7 thank you.

8 MR. ORTVED: I can continue.

9 THE COMMISSIONER: Oh, all right,
10 I am sorry.

11 MR. ORTVED: But if you are telling me
12 now that you are content to allow me standing then
13 I am not going to bore you.

14 THE COMMISSIONER: I am sorry, you
15 have to continue. I am not saying that you aren't
16 going to get standing either.

17 MR. ORTVED: Insofar as the difference
18 between the Hospital and the doctors is concerned,
19 simply stated, the Hospital is here on behalf of a
20 number of individuals, as well as the institution.
21 They represent nurses -- Mr. Scott represents nurses.
22 He represents staff not concerned with the clinical
23 care of the children. He represents the administration
24 and he represents the Board of Trustees.

25 The clients by whom I am obtained
26 take the position that there is not an identity of



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2 interest or there are situations that can arise
3 where there is not an identity of interest between
4 those parties and their interests, therefore, they
5 are asking that I make this application for standing
6 on their individual behalf.

7

8 The only other matter which I draw
9 to your attention is that I think that alone, of all
10 the parties here, I can take the position for you
11 to grant the standing is that it is no drain on the
12 public purse to do so.

13

14 THE COMMISSIONER: Yes. All right,
15 thank you.

16

17 Miss Kitely, now I want to raise
18 this question, first of all, the R.N.A.O., I want
19 you to deal with them separately from the individual
20 nurses.

21

MS. KITELY: I intend to do so, sir.

22

THE COMMISSIONER: Thank you.

23

24 If I could just eliminate standing
25 for a lot of people there would be lots of room.

26

27 MS. KITELY: Mr. Commissioner, I
28 intended to make remarks, both about the individuals
29 and the Association, and I intended to do the
30 Association last. It would follow logically if I did.

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32 THE COMMISSIONER: All right.

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MS. KITELY: What I planned to do, sir, is do something that we have not had for some time and that is to refer to some law. If you will forgive me for a few moments I wish to refer you to the case of the Royal Commission on Conduct of Waste Management at the decision reported at 17 O.R. second at 207.

If I could pass a copy to my friend, Ms. Cronk, perhaps she could pass it forward to you. I don't have enough copies for all of the participants today, sir. I assume that not all would have as much of an interest in it as would you.

The section about which we are dealing, sir, is, of course, Section 5(1)(2) of the Act and that is set out on page 208 of the decision of the Waste Management case, on the bottom of the left hand side. In this particular case there had been a hearing before the Environmental Hearing Board and following that the Royal Commission was directed and the issue came on as to who had the status before the Royal Commission. As the case points out, on the top of page 208, on the left hand side, at the bottom of the first paragraph, "the subject matter of the inquiry concerns allegations of corruption and not pollution." People who were interested in obtaining



B-7

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2 standing were several individuals, a Mr. Hutchinson,
3 for one, who was an adjacent land owner, an organization,
4 and this is on page 211, sir, the top right hand side:

5 "POWR, an unincorporated association
6 of concerned citizen known as,
7 'Protect Our Water Resources...'"

8 And, thirdly, Messrs. Sanders and Baker, who were
9 officials of that unincorporated association.

10 The Court ultimately found that the
11 adjacent land owner and the association ought to have
12 standing, but that Messrs. Sanders and Baker, the
13 officials of the unincorporated association, ought not
14 to. In coming to that conclusion the Court had to
15 deal with the relationship between 5(1) and 5(2) and
16 concluded, if I can summarize, that you needn't be
17 in a position of finding or making a finding of
18 misconduct under Section 5(2), in order to conclude
19 standing under Section 5(1).

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In other words 5-1 is broader than 5-2. The question stated by the Commissioner is of interest, and a way of pointing out to you, sir, at page 208 on the left hand side and I won't read it, but there the Commissioner has summarized the people that he was considering and those are the ones that I have just indicated to you.

Now Mr. Scott who was then acting on behalf of the Applicant made submissions which are summarized on page 210, on the left hand side, and the reasons on which his client the Applicant ought to be granted standing. There are paragraphs numbered 1, 2 and 3.

First of all, that the Applicants had participated in the process under review; and the process, sir, was the Environmental Hearing Board and therefore would have information to offer.

Secondly, that the Applicants would be affected, or have been affected by the results of the process and therefore have a substantial and direct interest.

And thirdly, the Applicants have made allegations of impropriety.



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The Court concluded, and this
is at the bottom of page 210, sir, in granting
standing to Mr. Hutchinson , they point out in
the last full paragraph there:

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" ...that he owned land
adjacent to the landfill site.

In our opinion on a proper
interpretation of section 5-1
the Commissioner ought to have
been satisfied that Mr. Hutchinson
has a substantial and direct
interest in allegations of
corruption which, if proven,
may have affected the granting
of a permit allowing the
enlargement of the adjacent
landfill site. "

Moving to the next paragraph, sir,

the second point is with respect to POWR:

" All the individual Applicants
are principal officers of
that organization. POWR
collectively and the individual
Applicants, were all accorded
standing before the Environmental



C-3

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2 Hearing Board, and made
3 submissions.

4

5 They allege they are dissatisfied
6 with the fairness of the hearing

7

8 by the Board, and have called

9

10 the integrity of that hearing

11

12 into question. It is our

13

14 opinion that, if the allegation

15

16 of corruption which is the

17

18 subject matter of the commission's
19 enquiry could have had an

20

21 influence on the conduct of

22

23 the hearing and the decision of

24

25 the Board in framing its

1

2 recommendations to the Minister,

3

4 they have a direct and substantial
5 interest in the subject matter

6

7 of the enquiry their interest

8

9 lies in the integrity of the

10

11 enquiry. They therefore agree

12

13 with Mr. Scott that Mr. Hutchison

14

15 POWR ought to be granted standing. "

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17 But in the next paragraph, the second next

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19 paragraph, they reject Messrs. Sanders and Baker by

20

21 reason of the fact that they are members of the

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2 unincorporated association which had already
3 been, in their view, granted standing.

4 In our submission, sir, applying
5 the kinds of reasoning which the Court did in
6 the Waste Management case, there are two particular
7 reasons why the individual nurses ought to
8 be granted standing. First of all, to use the
9 words in the Waste Management case they participated
in the process under review.

10 THE COMMISSIONER: I'm sorry,
11 no, they didn't, I am sorry nothing has been
12 under review in Phase II yet. We are talking
about Phase II?

13 MS. KITELY: Yes, Phase II being
14 the police investigation.

15 THE COMMISSION: They participated
16 in it?

17 MS. KITELY: They participated
18 in it.

19 THE COMMISSIONER: Yes, but
20 be careful now, because that would mean everybody
21 who was ever interviewed by the police would
have a right to standing here.

22 MS. KITELY: I am sure you can figure a
23 way around that, sir. In my submission, the nurses are

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2 on one side of the line by reason of their,
3 particularly the ones who have already been
4 called as witnesses, and the one at least who
5 will be called as a witness, were very heavily
6 involved in this investigation.

7

8 THE COMMISSIONER: I thought
9 the matter under review by the Environmental
10 Hearing Board was traditionally reviewed by the
11 Divisional Court, isn't that so, was the matter
12 under review there.

13

14 MS. KITELY: A public enquiry
15 was started to review the Environmental Hearing
16 Board.

17

18 THE COMMISSIONER: Yes, that's
19 right.

20

21 MS. KITELY: By analogy, sir,
22 there was a police investigation. There is
23 a public enquiry to review the process of the
24 police investigation and in my submission it
25 is directly analogous.

26

27 THE COMMISSIONER: Well you have
28 got to help me somehow, because obviously we
29 cannot have everybody that was ever interviewed
30 by the police or everybody who participated and
31 who wrote a letter to the police suggesting somehow
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2 some solution, all of those people would be
3 entitled too.

4

5 Surely the words of the
6 Statute are important. Are you satisfied there
7 is a substantial and direct interest in the
8 subject matter of this enquiry. What is the
9 substantial and direct interest of the nurses?

10

11 MS. KITELY: If I may continue,
12 sir, the second point I will be dealing with
13 your query, sir.

14

15 THE COMMISSIONER: Yes.

16

17 MS. KITELY: The second is, if
18 you will assume with me for the moment that
19 they did participate in the process under review,
20 the nature of their participation has been
21 very seriously called into question by my
22 friends Mr. Hunt and Mr. Percival on behalf
23 of the Attorney General and the Police. Some
24 have been accused of being uncooperative, or
25 of impeding or misleading the police in the
investigation, and in the prosecution of the
case against Susan Nelles.

26

27 If I can ask you to refer to
28 certain portions of the evidence, sir, in this
29 connection and what I have is a list of various

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2 excerpts from volume 96, 100, 101, 103, 104, 107
3 and 128, and I have organized them in such
4 a way that I can refer to them relatively
5 quickly, sir. The objective of referring
6 to these specific pieces of evidence is to show
7 the extent to which the nurses in their
8 participation in the enquiry was called into
9 question. If I can deal, sir, with, and I
10 have not made copies of all of them because
11 my friends and I assume you also the Commissioner
12 also has access to the transcripts. I have
13 volume numbered the person who was examining
14 and the page number and I will in each case
15 provide those to you. In examination of nurse
16 Costello in volume 96, by Mr. Hunt, at page 1615,
17 Mr. Hunt suggested as follows:

18

" Q. Are you aware that the
19 police value the opinions of
20 people that they interview in
21 connection with serious matters
22 like this who are connected or
23 associated in some way with
24 the incident that they are
25 investigating?

A. I assume so. "



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For the balance of the page, sir,

and I am trying to be very collective about the portions that I read, Mr. Hunt was suggesting that the police treat these opinions and conjectures very seriously, and when Nurse Costello referred to the fact that with her silly thinking and conjecturing that was something of a criticism for her not offering on an unsolicited basis, certain opinions to the police.

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THE COMMISSIONER: I am

temporarily with you as I obviously was temporarily with Mr. Ortved too. When one of your clients is alleged not to have cooperated with the police I certainly think it would seem reasonable to have the right to assist the client, that is by either examination, cross-examination or something of that nature on the subject.

19

MS. KITELY: In Phase II, sir?

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THE COMMISSIONER: I am talking

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about Phase II. I put the same question to you as I put to Mr. Ortved, are you concerned in the fight between Susan Nelles and the police?

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2 MS. KITELY: Until we hear
3 what happens in Phase II, I would have to say
4 at this point, no.

5

6 THE COMMISSIONER: In other
7 words, all you want to do in this matter is,
8 where any of your clients are maligned you want
9 to defend them, is that it?

10

MS. KITELY: No sir.

11

12 THE COMMISSIONER: What else
13 do you want to do?

14

MS. KITELY: If I might ...

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16 THE COMMISSIONER: Do you
17 want to establish that the police did or did
18 not do a good job?

19

20 MS. KITELY: On the point of
21 Susan Nelles if I might finish with that, sir.

22

THE COMMISSIONER: Yes.

23

24 MS. KITELY: None of my clients
25 at this point in time are defendants in that
lawsuit and it is for that reason that I am
saying it is not our position that we are
involved in that fight.

26

27 THE COMMISSIONER: I am talking
28 about the fight here, I am talking about
29 our fight not that lawsuit, the fight that is

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2 existing here, the investigation and the
3 prosecution of Susan Nelles. Are you --

4 MS. KITELY: To the extent in
5 that respect that our clients get thrown into
6 the fray, by way of suggestion there is
7 the Bell evidence, and for example if that
8 becomes an issue that that particular evidence
9 somehow affected the resolution of issues
10 between Nelles and the police then, yes, we
11 could well be interested in that.

12 THE COMMISSIONER: I'm sorry,
13 I don't understand that answer. I just really
14 wanted to know whether you are concerned in
15 that struggle.

16 MS. KITELY: All I can say,
17 sir, is we don't know what Phase II is going
18 to be.

19 THE COMMISSIONER: I don't
20 either, but I do know what it is supposed
21 to be, I have read the Order in Counsel and
22 the Amendment and it is to investigate the
23 circumstances of the investigation and the
24 prosecution of Susan Nelles in the four infant
25 deaths.

26 MS. KITELY: At this point in
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2 time all I can say, sir, is that on the face
3 of it it appears we are not involved in the
4 fight, to use your words, it is between
5 Susan Nelles and the police, but it could
6 happen during the course of the second Phase
7 we may become --

8 THE COMMISSIONER: Ms. Kitely
9 one of the things that I am concerned about,
10 we have taken a year with Phase I and I don't
11 want to take a year with Phase II. I now know,
12 believe it or not, what this enquiry is all
13 about.

14 MS. KITELY: Can you tell the
15 rest of us, sir?

16 THE COMMISSIONER: I may
17 not know what I can put in the report, but
18 I certainly know what it is all about. I don't
19 want to waste a lot of time with cross-examination
20 on subject matters that certain people are
21 not interested in, they have no direct or
22 substantial interest in. You certainly have
23 an interest in your client's individual
24 reputation. If it is alleged - for a while
25 I was going to say to you, I really don't think
there is - there may be a duty upon a citizen



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2 to cooperate with the police, there is certainly
3 not a legal obligation that I know of upon
4 a citizen to cooperate with the police.
5 Therefore I would not have thought it was
6 misconduct within the meaning of section 5 of
7 the Public Enquiries Act, if they didn't.
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2 But I now have reached the conclusion that if somebody
3 alleges that one of your clients, take for example,
4 that Bertha Bell was surly and unco-operative and
5 all the rest of it, you can come in and defend that
6 by either calling her or by cross-examining the Police
7 or something like that. But where the question arises
8 as to whether the investigation of the Police was
9 proper or improper, whether they should or should not
10 have charged Susan Nelles, I don't know what the
11 interest of Bertha Bell is, what substantial or direct
12 interest she has in that matter any more than any
13 other member of the public.

14 MS. KITELY: Mr. Commissioner, if I
15 can reply to one of the comments you made that you
16 don't want to waste time, might I simply say that
17 during the course of the combined Phase I and Phase II
18 when certain of the nurses were in that position, we
19 spent an enormous amount of time about the nurses and
20 their participation in the Inquiry, it seems to me
21 if that was a waste of time at that time we ought not
22 to have been doing it. To the extent that --

23 THE COMMISSIONER: There is something
24 in what you say.

25 MS. KITELY: It can't therefore be a
26 waste of time in Phase II.



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2 THE COMMISSIONER: Well --

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4 MS. KITELY: And it would be most
5 unfair if the allegations could be made through the
6 nurses in their cross-examination.

7

8 THE COMMISSIONER: I don't know why you
9 misunderstand me all the time. I am telling you that
10 if you are defending your clients you can do that, but
11 what I don't want you to do is taking over the reins
12 for Susan Nelles and --

13

14 MS. KITELY: I don't think Mr.
15 Sopinka would want us to do that. We don't intend to
16 do that. But might I reply to the comment that you
17 last made?

18

19 THE COMMISSIONER: Yes.

20

21 MS. KITELY: That we might have the
22 opportunity to come in and cross-examine. In my
23 submission that would be woefully deficient.

24

25 The way I would see that working, sir,
is perhaps - Mrs. Radojewski we know is coming back
for Phase II because she didn't go into Phase II
evidence at all - let's say that the Inquiry starts
into Phase II; we have several weeks of evidence of
Police Officers who interviewed Mrs. Radojewski. We
then have Mrs. Radojewski --

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27 THE COMMISSIONER: Several weeks fills

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3 2 me with horror.

3 MS. KITELY: Days, sir.

4 THE COMMISSIONER: One day. Several
5 minutes I would say.

6 MS. KITELY: Would that fill you with
7 horror? We have heard there are a number of officers
8 and two crown attorneys involved in this process.

9 THE COMMISSIONER: Yes.

10 MS. KITELY: And I can foresee hearing
11 evidence from those when we are not present, sir, and
12 just using Mrs. Radojewski --

13 THE COMMISSIONER: I am not suggesting
14 I am sorry, when you are not present?

15 MS. KITELY: Maybe I misunderstood
16 what your suggestion was about how this would work.
17 The ability to cross-examine; I was assuming that you
18 were giving us just limited standing or considering
19 giving us for purposes of individual witnesses.

20 THE COMMISSIONER: Well, I would give
21 you standing to your substantial and direct interest,
22 but I don't seem to be able to persuade you as to
23 what your direct and substantial interest is.

24 Your substantial and direct interest
25 if I understand anything that this thing says is in
the reputation, if you like, of your clients. But you



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have no substantial and direct interest in whether
they should or should not have prosecuted Susan Nelles
or whether they should or should not have investigated
the matter better.

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MS. KITELY: We --

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THE COMMISSIONER: Are you with me on
that? Can I ask you that and can I get a direct
answer as to whether you are with me or not?

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MS. KITELY: I am with you, sir, but
unfortunately I can't agree with you because when we
started out to the extent that these individuals
participated in the process under review, they have
the ability to give information, and the --

THE COMMISSIONER: What information

are they going to give? I am sorry.

MS. KITELY: We won't know, sir, until

they are called as witnesses.

THE COMMISSIONER: Well, what shatters
me about all this thing is that I can't get any
understanding with you at all. I just cannot make
myself clear and I cannot get you to answer any
question I put to you.

MS. KITELY: Well --

THE COMMISSIONER: Do you want to
participate in the fight between Susan Nelles and



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2 the Police?

3 MS. KITELY: The difficulty that I
4 am having with answering your question, sir --

5 THE COMMISSIONER: Well, I guess I
6 just can't make myself clear. I can never make myself
7 clear.

8 MS. KITELY: Well, with the greatest
9 of respect, I don't think that's the case, sir.

10 THE COMMISSIONER: All right.

11 MS. KITELY: We don't want to participate
12 to the extent of creating an adversarial situation if
13 that is what you are after in terms of the question.

14 THE COMMISSIONER: I don't care whether
15 it is adversarial or what it is. I just don't see
16 your substantial and direct interest in that fight.
17 Do you understand?

18 MS. KITELY: But Phase II, as I under-
19 stand it, sir, is not limited to just the fight, to
20 use your words, between Susan Nelles and the Attorney
21 General.

22 THE COMMISSIONER: Would you like me
23 to read the Terms of Reference to you again? Do I
24 need to do that?

25 MS. KITELY: No, you don't need to do
26 that, sir. It encompasses the entire Police



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2 investigation.

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4 To the extent that our client
5 participated in that investigation and to the
6 extent that they, in the words of the Waste
7 Management case, have an interest, a substantial
8 and direct interest and have information that they
9 can provide, they ought to be defended.

10

11 One of the difficulties, sir, is that
12 when Phases I and II were combined for purposes of
13 these individuals all sorts of suggestions and
14 allegations were made against our clients.

15

16 THE COMMISSIONER: What has that got
17 to do with whether you have standing in Phase II?
18 It has nothing whatever to do with it.

19

20 MS. KITELY: If, sir, we had not
21 combined Phase I and Phase II in my submission, and
22 if these nurses were unquestionably to be called back,
23 it is my respectful submission that we wouldn't be in
24 the position of having to convince you that we ought
25 to have standing because quite clearly so many of
them would be coming back. We know now that only one
of them is coming back.

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27 THE COMMISSIONER: All right.

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29 MS. KITELY: You seem to characterize
30 "reputation" as a catch-all, and to the extent that

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2 allegations were made against them of lack of co-
3 operation or whatever, then I suppose that does fall
4 into reputation and, yes, one of the interests, a
5 substantial one they have, is that their reputations
6 be protected.

7 But we spent days and hours, Mr.
8 Commissioner, of evidence with these very witnesses
9 in which my friends Mr. Hunt and Mr. Percival were
10 allowed the opportunity to make suggestions to the
11 various individuals, and it seems in my submission
12 only fair and reasonable that when those very same
13 individuals, the Police Officers or the Crown
14 Attorneys, whomever they might be, are here before
15 you and give the very evidence, that the nurses ought
16 to be represented.

17 THE COMMISSIONER: I am not quarrelling
18 with that at all. I am just trying to limit you as
19 to what your participation is going to be and you
20 won't accept anything I say.

21 If you want to be here to protect your
22 clients I am all with you. And if you want to be here
23 to be junior counsel to Mr. Sopinka I don't want you
24 here at all. Now have I made that position clear?

25 MS. KITELY: I understand and I agree
26 with you, sir. However --



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2 THE COMMISSIONER: Could we stop there?

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4 Could we just once stop there and then there will be
a celebration because you and I have agreed on some-
thing.

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6 MS. KITELY: Well, we can have the
7 celebration, sir, but I am afraid it might be pre-
mature.

8

9 THE COMMISSIONER: Yes.

10

11 MS. KITELY: Because what I have no
12 doubt will happen is that your definition and my
13 definition of stopping at being junior counsel to Mr.
14 Sopinka will be different.

15

16 Now if perhaps it is necessary to
17 itemize where that line is drawn, then I am prepared
18 to give --

19

20 THE COMMISSIONER: We are going to have
21 a fight every day, every solitary day on this matter,
22 and that is because we can't apparently communicate.

23

24 MS. KITELY: Well --

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26 THE COMMISSIONER: If you would just
27 tell me what it is you want to do at least I could
28 deal with that.

29

30 MS. KITELY: Mr. Commissioner, I can
31 tell you in basics what we want to do.

32

33 THE COMMISSIONER: All right.

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2 MS. KITELY: We want to be here
3 present for every day of the Inquiry. We want to have
4 the right --

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6 THE COMMISSIONER: It is a public
7 hearing. You can certainly be here.

8

9 MS. KITELY: At this table with standing,
10 sir.

11

12 THE COMMISSIONER: Yes. All right.
13 And then what?

14

15 MS. KITELY: We want to have the right
16 to cross-examine any witness that reflects directly
17 or indirectly on our clients' evidence before --

18

19 THE COMMISSIONER: Reflects - wait a
20 minute. Directly or indirectly on?

21

22 MS. KITELY: Our clients' evidence that
23 they have already given, or behaviour. We wish to have
24 the right to call witnesses as we did have in Phase I.
25 And just as we had to do --

26

27 THE COMMISSIONER: What would you call
28 them for? What do you have in mind?

29

30 MS. KITELY: Well, Mr. Commissioner,
31 we didn't know when we started --

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33 THE COMMISSIONER: Call an extra policeman
34 as to how he should conduct an investigation?

35

36 MS. KITELY: We didn't know when we

37

38



started Phase I the answer to that question, and I can no more give you the answer to that in Phase II, but that is a right, and I understood you to be asking me what kind of participation we sought.

THE COMMISSIONER: You want the right to - you want to be able to cross-examine on any evidence that reflects directly on your clients' evidence or behaviour. Is that right?

MS. KITELY: That's correct.

THE COMMISSIONER: And what else do you want?

MS. KITELY: The right to call evidence.

THE COMMISSIONER: On what?

MS. KITELY: Well, as I say, sir --

THE COMMISSIONER: Evidence relating to the price of eggs in Peru is not relevant. What evidence do you want to call?

MS. KITELY: All right. If you wish to try to define that, evidence relating directly or indirectly to the conduct of our clients and their evidence.

THE COMMISSIONER: All right. Directly or indirectly on the conduct of your clients in relation to that particular subject matter, and that



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11 is --

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3 MS. KITELY: Phase II.

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5 THE COMMISSIONER: - the investigation
and prosecution.

6 MS. KITELY: Yes.

7 THE COMMISSIONER: Anything else?

8 MS. KITELY: We wish to make submissions
when the time comes.

9 THE COMMISSIONER: All right.

10 MS. KITELY: And if you wish to add
the same qualifications I have no difficulty with that.

11 THE COMMISSIONER: All right. You
12 want to cross-examine on any evidence which reflects
13 directly on your clients' evidence or on your clients'
14 behaviour?

15 MS. KITELY: Directly or indirectly
16 I said, sir.

17 THE COMMISSIONER: Directly or
18 indirectly on your clients' evidence or behaviour.
19 You wish to call evidence which relates to your clients'
conduct in relation to the Phase II?

20 MS. KITELY: Directly or indirectly
21 relates.

22 THE COMMISSIONER: What on earth does
23 "indirectly" mean?

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MS. KITELY: I don't know, sir, but I know that you are going to hang me on "direct" so I decided to leave the door open.

THE COMMISSIONER: You really must not say that sort of thing. Now you may think it and you may say it to your client, but some day you are going to say it to some judge who, believe it or not there are some judges who are harder to get along with than I am --

MS. KITELY: I will remember that, sir.

THE COMMISSIONER: - and something awful is going to happen.

MS. KITELY: I understand your interest in trying to narrow the focus of our position, sir, but I would ask you to appreciate that since we don't know what is happening in Phase II we have to allow ourselves some latitude in approach, and it is for that reason that I am suggesting directly or indirectly.

THE COMMISSIONER: Well it depends on how indirectly it is.

MS. KITELY: Well --

THE COMMISSIONER: Because you can't get away with that because you can always say that something indirectly relates.

Really the thing is it is a substantial



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2 and direct interest in the subject matter, and an
3 indirect one is not sufficient.

4 MS. KITELY: Could I ask, sir, that
5 we consider that when it happens?

6 THE COMMISSIONER: I know, but I am
7 going to make a ruling with respect to your standing.

8 MS. KITELY: Yes, I appreciate that,
9 but I would ask you to consider if you are considering
10 qualifications such as what we are now discussing
11 that we deal with indirect as it happens.

12 THE COMMISSIONER: If you will tell
13 me what indirectly means then I might consider it,
14 but the statute says a substantial and direct interest
15 in the subject matter of the Inquiry, and until you
16 tell me what indirectly is, I am not going to give
17 you a right to ask questions on matters that directly
18 or indirectly - they will have to directly affect
19 your clients.

20 MS. KITELY: I understand, sir.

21 THE COMMISSIONER: And the same thing
22 is the evidence that you call will have to directly
23 affect your clients and the submission you make will
24 have to directly affect your clients because that is
25 what the statute says.

26 MS. KITELY: I understand.



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THE COMMISSIONER: Now I would let you

get away with some indirect if you would please tell
me what it is, but if you tell me you can't do it, I
am not going to make that ruling and I am going to
leave it open to anyone any time to cross-examine
any time you lead any evidence as to how this can
directly affect your interest. If it doesn't directly
affect your interest you won't be allowed to proceed.

Now that at any rate I have made myself
plain, and are you prepared to live with that or not?

MS. KITELY: What I ask, sir, whether
the same kinds of qualifications will be imposed on
the doctors?

THE COMMISSIONER: Yes. The doctors
have already offered that. Mr. Ortved said that.

MS. KITELY: I didn't understand --

THE COMMISSIONER: He wasn't at all
concerned with the Nelles fight. That is why I asked
you - if I could get that undertaking that you weren't
concerned in that, you weren't trying to raise an
issue with the police on one side and the nurses on
the other, I will be happy, but with individuals,
when police make a suggestion that Mrs. Bell didn't
tell everything she should have told, then you have
a perfect right under those circumstances to



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2 cross-examine. You have a perfect right under those
3 circumstances to call Mrs. Bell to say I did or I
4 didn't or why I did or why I didn't, all that sort
5 of thing if you want to, but that is a direct interest
6 and not indirect.

7
8 When you start saying indirect you can
9 say the whole reputation of the nurses generally are
10 concerned in this matter.

11
12 MS. KITELY: Well --

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14 THE COMMISSIONER: That the way the
15 police moved into the Hospital is not proper.

16
17 MS. KITELY: That of course brings
18 me to my position with respect to the Association,
19 sir.

20
21 THE COMMISSIONER: Yes. All right.

22
23 MS. KITELY: The Registered Nurses
24 Association has a variety of objects, and I appreciate
25 that you have heard them before in Phase I, but allow
me to return to them.

26
27 They are to promote the stated objects
28 of the Association which is:-

29
30 "To optimize the effectiveness of
31 the nurse in contributing to the
32 quality of life, and to that end;
33 to influence positively the quality of



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"practice of nurses;

3

to promote and encourage the profession
of nursing;

4

to assist members of the Association in
matters relating to their practice and
its environment,

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and to identify and promote the common
interest of the members of the
Association."

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Now, to the extent that ultimately in Phase II you might make certain recommendations which affect the way in which health care professionals ought to deal with the police, it will affect, not only the situation that a given Hospital, citing the Hospital for Sick Children, but every other Hospital in this province. To the extent that you make any comments on the way in which certain individuals, who are members of the Association behaved or conducted themselves during the course of the investigation, then that does reflect on other nursing professionals in the way in which they ought to conduct themselves.

THE COMMISSIONER: I don't understand that. I don't understand that at all. If I make comments that the nurses for the Hospital for Sick Children did not co-operate with the police why does that affect nurses of other Hospitals?

MS. KITELY: Because in so doing I would assume, sir --

THE COMMISSIONER: I wouldn't say the nurses generally.

MS. KITELY: You would say Miss Smith.

THE COMMISSIONER: Yes.

MS. KITELY: If you found that Miss Smith did not co-operate because she did A, B and C,



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2 then we can eliminate A, B and C, then we can
3 eliminate Miss Smith, but surely, the Association is
4 going to be interested in what A, B, and C are, and
5 in promoting to their members, what A, B and C are
6 and how they should be affected in similiar situations.

7 I think the difference between us,
8 if I might, sir, is that while the Hospital, while
9 this inquiry is related to the Hospital for Sick
10 Children, whatever comes out of this is going to
11 affect more than this given situation, just as the
12 Dubin Report was just an inquiry with respect to the
13 Hospital for Sick Children. It has had repercussions
14 in many other Hospitals.

15 THE COMMISSIONER: Because, you see,
16 he told the Hospital how they should conduct their
17 affairs generally. If I simply say that it is not
18 very nice for a nurse to clam up and not tell the
19 police, and if that should be the fact, and if I
20 should decide that it is something that I should
21 report on, that applies not just to nurses, it applies
22 to the whole world and the police are investigating what
23 they think is a crime. There are some people who think
24 it would be appropriate to co-operate with the police
25 and there are some people who think they shouldn't,
and certainly people who were, themselves, personally



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2 involved it is generally recognized that they don't.
3 They are under no obligation to co-operate, but
4 people who are not immediately involved there is an
5 argument that they should co-operate. Now what has
6 that got to do with the nurses though? What has that
7 got to do with the nurses, the Registered Nurses
8 Association of Ontario?

9

10 MS. KITELY: Because presumably the
11 reason why these people are the subject matter of a
12 discussion is because of their profession. They are
13 in a position to have information and it is whether,
14 with that known information, what they do with it
15 because of their profession.

16

17 THE COMMISSIONER: It is not because
18 of their profession, it is because of their job,
19 because of what they were doing and because they
20 were there at the time.

21

22 MS. KITELY: Because of their profession.

23

24 THE COMMISSIONER: It is not a
25 professional matter, it is a matter that anyone, who
is present on the scene at the time, and had something
to say, maybe shouldn't have told that to the police.
Maybe they didn't. What has that got to do with the
profession? What has that got to do with the Registered
Nurses Association?

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MS. KITELY: I keep saying it is and
you keep saying it isn't, sir.

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THE COMMISSIONER: I am asking you
what has that got to do with the Registered Nurses
Association?

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7 MS. KITELY: What it has got to do
with it is the professional organization wants to
see that its members carry on in a professional kind
9 of way and if this inquiry comes up with a conclusion
10 that certain nurses acted in a way which isn't
11 professional then they are going to do something with
12 that recommendation and presumably they will want
13 to act on it. If they haven't been here represented
14 and had an input into the recommendation then it would
15 be most unfair and unfortunate.

16

THE COMMISSIONER: Yes, all right.

17

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MS. KITELY: Can I say, sir, that while
we are seeking standing on behalf of both the
professional organization and the individuals, we are
particularly concerned about the individuals.

20

Those are my submissions.

21

THE COMMISSIONER: Yes. All right,
thank you.

22

Perhaps I should hear from you, Mr.
Brown, as to why you want standing.

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E-5

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2 MR. BROWN: Mr. Commissioner, I request
3 standing on behalf of Mrs. Trayner with some reluctance.
4 In the first place I know, of course, that you are
5 anxious to see these proceedings streamlined and
6 brought to an end at the earliest possible date. I
7 can assure you that my client would like to see this
8 inquiry brought to an end at the earliest possible
9 date and would like to see herself out of the public
10 eye and back to her chosen profession of nursing as
11 soon as possible. I am concerned that she will remain
12 in the public eye throughout Phase II and that it will
13 be in her interest and, indeed, in the public interest
14 that she have standing during Phase II with the right
15 to counsel and all that entails.

16

17 Mr. Commissioner, you will be giving
18 a statement later today with respect to your decision
19 that the argument on Phase I should be in public and
20 your counsel was good enough to release to us a copy
21 of your reasons on that issue and I understand you
22 will be averting to the public nature of this inquiry
23 and the desire to avoid needless damage to individual
24 reputations. That is a desire that all of us share
25 and I know that your counsel share that desire.

26

27 In my submission, there is a real
28 risk that my client's name and reputation could be
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E-6

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2 needlessly and irreparably damaged if she does not have
3 standing in Phase II and, in my submission, it
4 was a risk which she should not be expected to take.

5 THE COMMISSIONER: What part do you
6 anticipate playing, and once again, I put the same
7 question that I put to Mr. Ortved and Ms. Kitely.
8 Are you concerned in the fight between Susan Nelles
9 and the police?

10 MR. BROWN: The answer to that is
11 no, but I want to explain my answer to that, Mr. Commissioner
12 because . . . with all due respect I do not see Phase
13 II as simply a fight between counsel for Miss Nelles
14 and counsel for the police and the Crown Attorneys .

15 As I read your terms of reference with
16 respect to Phase II, as they have been elaborated
17 by the Attorney General, it is an unduly narrow
18 definition of those terms to simply characterise it
19 as a fight between Miss Nelles and the police.

20 THE COMMISSIONER: I didn't really --
21 it is a matter of public interest, of course. Are you
22 anymore concerned than anyone else in the resolution
23 of that public concern, and the proper investigation
24 and prosecution? That is all. Obviously Susan Nelles
25 is, because she was the person involved and she was
the person who was charged.



E-7

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MR. BROWN: We are concerned about the potential fall out of that inquiry, insofar as it may affect our client's name and reputation. I am not interested in standing behind Mr. Sopinka or, indeed, standing behind the police or the Crown Attorneys and taking one side or the other, but what I am concerned about is that in the course of the evidence dealing with the investigation, dealing with the prosecution, my client's name will inevitably play an important role, and it is my submission, unless we have standing during that Phase of the inquiry, we are not in a position to protect our client's interest and her name.

I can assure you, Mr. Commissioner, that we have no desire to participate in the cross-examination of witnesses or to call evidence unless it is directly relevant to our client's specific interest and, indeed, I would be happy as can be if we could play a very passive role in Phase II, but I do not see that it would be possible for us to withdraw from the inquiry at this time and to say that Mrs. Trayner has no direct interest in Phase II.

I think I must, Mr. Commissioner, explain to you, unless I can stop now, that I think that I have to explain to you my reasons for saying



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that. In the first place, Mrs. Trayner was an important witness at the preliminary inquiry. She gave evidence I think for more days than any other witness. She gave evidence for six days.

THE COMMISSIONER: And Dr. Rowe.

MR. BROWN: Even Dr. Rowe. Dr. Rowe gave more evidence before you in Phase I of this inquiry than Mrs. Trayner did but I think at the preliminary Dr. Rowe didn't give anywhere near as much. Mrs. Trayner gave six days evidence in January of 1982 and she was recalled in April of 1982, with respect to similiar fact evidence.

Secondly, at one stage during the preliminary, in fact, at a relatively early stage I think on the fourth or fifth day, the Crown sought to have Mrs. Trayner declared a hostile witness with respect to her statement concerning Susan Nelles' reaction to the Pacsai death and, in fact, His Honour Judge Vanek directed leave to the Crown to cross-examine Mrs. Trayner with respect to that statement and she was, in fact, cross-examined by the Crown.

Thirdly, Mr. Commissioner, Mrs. Trayner was the object of a number of bizarre incidents which we have already canvassed, at least in part, during



E-9

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2 Phase I. At the time those bizarre incidents were
3 raised in Phase I. I think you pointed out that
4 they were more properly the subject of Phase II what
5 you allowed evidence to be lead and questions to be
6 asked on those incidents. I would expect that those
7 incidents would also be raised in Phase II and would
8 form a part of Phase II, and, indeed, that there would
9 be evidence concerning the reaction of the
Metropolitan Toronto Police to those incidents.

10 Now, the second point, and it is a
11 secondary point, Mr. Commissioner, but I would
12 expect Mrs. Trayner would be called, as a witness in
13 Phase II of the inquiry.

14 THE COMMISSIONER: There is no question
15 that she will be called and she will be represented
16 by you.

17 MR. BROWN: I appreciate that, but
18 it seems to me that to properly represent Mrs. Trayner
19 in Phase II, when she is called as a witness in Phase
20 II, it would be necessary to have a proper appreciation
21 of the evidence that has been led into Phase II, so
22 she can be properly advised with respect to it. It is
a secondary point and I don't think it is nearly as
important as the first point.

23 The last point, Mr. Commissioner, and
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E-10

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2 I know this submission is not going to make you
3 particularly happy, but it seems that I feel that it
4 must be put and I know it supports argument for
5 standing for all the parties that have participated
6 in Phase I and that is this: we have tried in Phase
7 I to separate Phase II evidence and keep it out of
8 Phase I. That hasn't always been possible and to
9 some extent there has been a flow-over of Phase II --
10 Phase I evidence or Phase II evidence -- into Phase I.
11 I am concerned that there may be evidence in Phase
12 II which goes, not just to the investigation and the
13 prosecution of the charges, but which may also go to
14 how and by what means the children met their deaths.

15 THE COMMISSIONER: I am concerned about
16 that, too. We have done everything we can do to
17 avoid that. If it happens we may have to call all the
18 people back or either abandon an interest in Phase II
19 or may have standing that has been denied. I don't
know what we will do about it. If it happens it
happens.

20 MR. BROWN: Mr. Commissioner, with all
21 due respect, I am not sure that it a risk that we
22 can afford to take, but certainly in my submission
23 a risk that my client should not be required to take
24 and I don't see how you can avoid evidence if it does

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E-11

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2 come out in Phase II that is probative to the Phase
3 I issues, how you can possibly ignore it or how you
4 can possibly remedy it after the fact.

5

THE COMMISSIONER: I can remedy it.

6

That is what the statute is for. The statute says that
7 I will not make any report without giving the person
concerned with misconduct, without giving the person
8 concerned an opportunity to attend, cross-examine
9 and give evidence .

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MR. BROWN: The damage may be done,

Mr. Commissioner, if the evidence comes out in the
absence of a person having the opportunity to make
an immediate response or indeed to make submissions
as to why it shouldn't come out. I know your
counsel has been scrupulous in attempting to prevent
that sort of thing happening during Phase I and I
think by in large we have been successful in doing
that, but it seems to me that by granting standing
to my client you prevent that very serious risk from
occurring in her situation.

THE COMMISSIONER: Thank you. Mr.

Labow.

MR. LABOW: Thank you, Mr. Commissioner.

Mr. Commissioner, the parents were granted standing
in the first Phase and they never had the ability to



E-12

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2 take part fully into the investigation, into the
3 deaths of their children and all the other children
4 we were looking into.

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2 We feel that because we are looking into the
3 proceedings and the investigation that arose
4 concerning and after those deaths they should
5 have the same right in the second Phase.

6 THE COMMISSIONER: Isn't that
7 what Mr. Lamek is here for?

8 MR. LABOW: No. I think
9 Mr. Lamek is here as your Counsel and to fully
10 represent the public but the parents have
11 a direct and substantial interest into the
12 deaths per se because they were obviously
13 their children.

14 THE COMMISSIONER: Right.

15 MR. LABOW: And our submission
16 is that because we are looking into the
17 investigation of those deaths then they still
18 have that same direct and substantial interest.

19 In February of 1983, the
20 Attorney General addressed the Legislature
21 concerning the Atlanta Report and he said at
22 that time that it was particularly understandable
23 that the parents of the children involved
24 had become frustrated by the lack of a
25 comprehensive explanation.

26 Now one of the reasons for calling



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2 this commission was to give the parents a
3 comprehensive explanation, if possible, of
4 all aspects of why their children died; of
5 what occurred after their children died; of
6 what the police did in their investigation;
7 of what the Crown did when they looked into
8 it; and of what happened at the prosecution
9 that was launched due to those deaths. Surely
10 the parents have a direct and substantial
11 interest to be here to ensure that they get
12 as full an explanation with regard to their
13 individual concerns in this Phase.

12

13 The Terms of Reference in
14 the preamble indicate that there is a view -
15 that the Cabinet viewed that there was a need
16 for the parents of the deceased children and
17 the public to be informed of all available
18 evidence as to the deaths and the proceedings
19 arising therefrom. There is no differentiation
20 in the preamble, the preamble doesn't say, and
21 the Cabinet did not say that the parents only
22 had an interest to be informed of all evidence
23 as to the deaths and therefore should be given
24 standing; and therefore had a substantial
25 interest in what occurred, but they also have



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2 an interest in the proceedings that arose
3 therefrom. When we looked at paragraph three
4 and were granted standing as to how and
5 by what means the interest was obvious.

6 It is our submission that
7 your duty to enquire into, determine and
8 report on the circumstances surrounding the
9 investigation and the prosecution that arose
10 therefrom is just as substantial an interest.
11 You now have a direction from the Cabinet to
12 comment fully upon the conduct of any person,
13 any person during the investigation; any person
14 who had a part in the institution of the
15 charges; any person who had a part in the
16 prosecution of the charges. Now aside from
17 the Cook family, who I would submit to you
18 have an even more direct interest, five of
19 the families that we represent had their
20 children and the deaths of their children entered
21 in evidence at the preliminary enquiry as
22 similiar fact deaths. The Turners, the Lutes,
23 the Gosselins, the Gionas and Inwoods, all had
24 their babies deaths put before his Honour Judge
25 Vanek as a similiar fact death.

26 Now it is our submission that if
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F-4

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2 they were used in the prosecution, and they
3 were, then the parents have a right to know
4 what kind of investigation was done before those
5 deaths were mentioned; what kind of enquiries
6 were made by the Crown Attorney's office and
7 the Coroner's office and the police, before
8 they decided to use those deaths as part of this
9 investigation. They should have a right to
10 know what was done, as well as what was not
11 done. The parents are very concerned, in most
12 cases, that they only learned about the inclusion
13 of their children in the Nelles preliminary
14 enquiry after it was concluded, and they want
15 to know what exactly was done with regard to
16 their individual children. They also want
17 to know a number of other things, why other
18 charges were not laid if the deaths were that
19 suspicious. They want to know how it developed
20 that a particular person was charged but no one
21 else was; or what thought processes were gone
22 through to charge that person; how complete
23 was the investigation.

24

25 THE COMMISSIONER: This is
26 what concerns me. I know they are concerned
27 about the investigation, but Phase I, it is the



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2 cause of death of the children and that of
3 course is a much different matter, at least to
4 me it is a much different matter, and the
5 prosecution for causing the deaths of the
6 children and the investigation, that is part
7 of the police process. That is what I am
8 instructed to investigate and that is what
9 Mr. Lamek is supposed to be doing and certainly
10 I would think that Mr. Sopinka has a particular
11 interest in that matter too. What is the
12 direct and substantial interest other than
13 the fact that you represent the parents of
14 the babies who were the victims of the crime,
15 if it was a crime? Now is there anything else,
16 is there anything else other than that?

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MR. LABOW: The interest is

to find out exactly what was done to look into
those deaths. Mr. Sopinka's interest is to
say, well, why did they charge my client. The
parents interest is the same interest, why did
you charge that person and what did you do
to look into these deaths when the evidence
was fresh. Surely not only what they did, but
when they did it and how they went about it
are important questions for the parents to find



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2 out.

3 Now one of the problems is
4 that Mr. Lamek, who is Commission Counsel,
5 represents the public *per se*, and no doubt
6 the parents are incorporated within the public,
7 as is every other person granted standing at
8 this enquiry. The public encompasses everybody,
9 but the parents' interest, which I must
10 demonstrate to you is direct and substantial,
11 is just that their children's deaths played
12 such a strong part in this prosecution that
13 they should have standing to look into those
14 matters, they should be here to try to help
15 you to bring out all the facts. Their interest
16 is much more direct than just the public *per*
17 *se*. Their interest is much more substantial
18 than just the public *per se*. If they had
19 anything to add in Phase I, and it is my
20 submission that we did have a lot to add in
21 Phase I in looking at these particular deaths,
22 we will have the same thing to add in Phase II,
23 and we have a more focused interest.

24
25 THE COMMISSIONER: I accept
that, I am not suggesting for a moment that
it wouldn't be helpful to have you in and



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2 have all the other Counsel in, but there
3 are problems, there are problems of time and
4 money and I have to bear that in mind.

5 Because I could conscript I suppose, if I
6 wanted to, I could have an advertisement
7 saying I would like the help of all the Counsel
8 in Toronto, they would all come and a great
9 many of them would be of tremendous assistance,
10 but somewhere around the turn of the century
11 I hope to be able to sit down and write the
12 report. Now I am overstating it, and I
13 will have something to say about overstatement
14 later on.

15 MR. LABOW: I don't know
16 if you are overstating it that much, Mr. Commissioner,
17 I am sure every Counsel in Toronto would love
18 to be here to try and help you determine this
19 issue.

20 I think though we have to
21 focus upon the Public Enquiries Act and what
22 they call for. If we are calling for a direct
23 and substantial interest into these particular
24 Terms of Reference, which I submit was drafted
25 in order to try to explain the matter to the
parents and the public, specifically to the



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2 parents, then they must have a direct and
3 substantial interest in the entire matter
4 before you, not only Phase I but Phase II as
5 well. The fact that you can now comment
6 fully, according to the amendment, makes it
7 imperative in my view that the parents be
8 allowed to be here and take full part in order
9 to bring out anything that can possibly brought
out.

With regard to the Cook
child, his parents have, I would submit, the
most direct interest here as regards to the
parents of any of the children. We have already
heard that the police were on the scene prior
to this child's death, and exactly what was
discussed and what went on and who was contacted,
and what kind of decision was made and why it
was made so that the police did not come,
or were not scheduled to resume their - or
start their investigation until Monday is of
key interest to Mr. and Mrs. Cook, they want
to know more than anyone else why there was
a delay. Conceivably if the police were on
the scene on Saturday night, their child would
not have died early Sunday morning, and that



F-9

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2 I would submit gives them the most substantial
3 interest of anyone at this Commission. Surely
4 the death of their child is more substantial
5 than why Susan Nelles was charged, and why
6 that even happened in this situation. But
7 as regards to the other parents, I would
8 submit the interest is almost as substantial,
9 because they want to know how their deaths,
how the deaths of their babies were investigated.

10 THE COMMISSIONER: All right.

11 Thank you. Mr. Olah I see you are here, are
12 you seeking standing on Phase II or not?

13 MR. OLAH: Absolutely not,
14 sir, I am here for submissions on Phase I.

15 THE COMMISSIONER: Yes,
16 all right, no, that is fine.

17 MR. OLAH: I will be glad
18 to leave when those submissions are terminated.

19 THE COMMISSIONER: Yes, all
right. Thank you. Who is next? Yes, Mr. Tobias,
20 are you seeking standing?

21 MR. TOBIAS: Yes, I am,
22 Mr. Commissioner. Mr. Commissioner, do you
intend to break?

23 THE COMMISSIONER: Oh --

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2 MR. TOBIAS: I suppose I
3 could say a few things in a minute and a half,
4 but it is unlikely.

5 THE COMMISSIONER: We will
6 have a break. I intend to hear from you,
7 Mr. Shinehoft and Mr. Shanahan, if he is here,
8 and then if anyone has any position otherwise.
9 I am thinking if you have a position with
10 regard to those who have made application,
11 all the people who apparently have are going to
12 have standing and then find out from you, Mr. Lamek,
13 what representations you have, if any, with
14 respect to the matter and that I am quite
15 sure will take us - do you want to start
16 argument? Then I am going to read this matter,
17 do you want to start your argument today or
18 not, I mean this morning, this afternoon.

19 MR. LAMEK: I am perfectly
20 happy to start this afternoon, sir.

21 THE COMMISSIONER: Well we will
22 see what it is going to be we may not get
23 to Phase I argument today but you will be
24 here in any event.

25 MR. LAMEK: When you say today,
26 you mean this morning?



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3 THE COMMISSIONER: This morning,

4 all right 20 minutes.

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14 --- Short Recess



G-1
EMT/hr

1 2 ---Upon resuming.

3 4 THE COMMISSIONER: Before anyone gets
5 6 too keen on standing let me just tell you what my
6 7 plan is which Mr. Percival just got from me in the
7 8 hall: as soon as we start on Phase II I intend to
8 9 continue throughout the summer. I have to be in
9 10 Quebec on business, called the judicial game business
10 11 from July 23rd to July, I guess. it is until the following
11 12 Monday which is the 30th of July, but other than that
12 13 and possibly one other week, if I am pressed hard
13 14 enough, we will be sitting throughout the summer
14 15 on Phase II and I hope that it will be finished
15 16 Labour Day or shortly thereafter. So I don't imagine
16 17 that that would have any effect on anybody's
17 18 application for standing, but you may just as well
18 19 know.

20 21 MR. YOUNG: Last year we sat three
21 22 days a week during the summer. Is that your plan
22 23 this year?

24 25 THE COMMISSIONER: I would like it but
25 26 I don't want to force it upon people, but if they
26 27 would prefer to sit three days a week, it would
27 28 certainly improve my temper.

29 30 MR. YOUNG: I would move that we
30 31 sit three days a week.

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2 THE COMMISSIONER: That will probably
3 be what happens but we will sit four days a week
4 until the end of June and thereafter three days a
5 week unless there are some special circumstances or
6 consideration, that there might be a witness that we
7 would have to oblige by sitting on either Monday or
Friday.

8

Now, Mr. Tobias.

9 MR. TOBIAS: I am applying for standing
10 on behalf of the family of Jordan Hines, and may I
11 start by saying that I adopt much of what Mr. Labow
12 has already indicated to you I do not intend to
13 repeat his point, sir, to belabour it, but there is
14 one point he made that I should say from the outset
15 that I do not adopt, that I will come back to later
16 and deal with later, but I would like to start by
17 talking about what I perceive to be the gut or key
18 issue, and that is the public interest in the
19 circumstances surrounding the investigation of the
20 deaths and the prosecution of the charges as against
21 the parental interest, and whether or not there is
22 really any distinction or difference in those two
23 because I think at the end of the day when we analyse
the question that is really what it comes down to, and
I think the standing of other parties can be analysed

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G-3

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2 along much the same lines, and particularly the doctors
3 and the nurses.

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5 May I start by saying this, that as
6 I interpret the words "substantial and direct
7 interest" that are used in the legislation, it seems
8 to me that when determining whether one has an
9 interest, what you are really looking at is the
10 effect that the events being inquired into have or
11 had upon that person and their rights and their life.

10

11 If they have no effect whatsoever,
12 then clearly that party is not an interested party,
13 and if you look at the three main players in this
14 scenario, and I would submit to you that they are
15 the Crown Attorneys and the Coroners, and the
16 Metropolitan Toronto Police and Nurse Nelles, that

15

16 principle is clearly reflected, because after
17 all the fact is that the actions of the police and
18 the Crown had a very dramatic impact and effect upon
19 the life of Nurse Nelles and upon her rights. And if
20 it weren't for that effect and if it weren't for that
21 impact then clearly she wouldn't have an interest
22 either and she wouldn't have standing. And the same
23 could be said of the other two players.

22

23 The life of the institutions, the
24 Attorney General's Office and the Metropolitan Toronto

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G-4

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2 Police Force - and make no mistake about it, institutions
3 have a life - the events into which you are inquiring
4 have and had an effect upon the life of those
5 institutions and anything that you might say about
6 their conduct might have an effect. So if we are
7 looking at interest my submission is we have to look
8 at how do the events affect the players.

9 Now with respect to the public there
10 is no question that the public has a great concern
11 dealing with the investigation and the prosecution
12 of charges. But in fairness I think the point is
13 that the public concern, albeit a legitimate
14 concern, is basically an abstract concern, and the
15 public is interested in what happened essentially
16 as an abstraction.

17 It is in a very, very broad sense that
18 they are looking at the administration of justice,
19 what was done and what wasn't done, were the duties
20 that we entrust to the police and the Crown honoured?
21 Did they do a good job? Could they have done more?
22 Should they have done more on the one hand ?

23 And on the other hand they look at the
24 actions of those institutions as they affect the life
25 of the individual involved. And then thirdly they
look at the actions in terms of were the actions



G-5

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2 appropriate in accomplishing an accounting because we
3 are very concerned if someone was harming babies that
4 that person be brought to justice.

5 But again I point out that the public
6 perception and the public interest is very much an
7 abstraction. And now I would like you to look
8 specifically at the Hines family and at all the
9 families because their interest I say to you in the
10 first hand, and this is a major distinction, is far
11 more than an abstraction.

12 The fact is that they are entitled to
13 know what was done in terms of looking into all of
14 these deaths, into the whole series of deaths because
15 they are the victims, and if the investigation does
16 not handle it properly, if it was botched, then it
17 may very well be that a perpetrator of harm to those
18 babies may go without the kind of public accounting
19 that I am talking about.

20 But you see they are not affected by
21 that just in the abstract in the sense that justice
22 is not done. The events that occurred at that Hospital
23 and the events which occurred after the deaths affect
24 their life in a very, very direct and very real way.
25 It affects them day to day. It is something that is
constantly in their minds. It is something that is



G-6

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2 going to be in their mind every time they deal with
3 those institutions because once burned forever fore-
4 warned. And in that sense they are interested not
5 in an abstract sense at all, but in a very direct
6 way.

7

8 What you determine in terms of how
9 the investigation of the death of their baby was
10 handled will affect them directly and it will affect
11 the course of their life. It will affect them as
12 human beings, and I think that is a major distinction
13 which I wish to draw.

14

15 Now it has been said that in fairness
16 you are represented by very able counsel and that
17 surely that counsel helps protect the public interest,
18 and that is true. I do not challenge that. I do not
19 challenge that at all.

20

21 However, I think again we have to
22 draw a line, and it may be a very fine line, a very
23 difficult one to make, but it is critical that we
24 draw it, is that what your counsel are representing
25 is that abstraction, that abstract general public
interest. They cannot possibly do a good job
representing the greater and more direct interest
with respect to all 36 sets of parents. It is an
impossibility. They simply cannot deal with it that



G-7

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2 directly on a child by child basis. Otherwise, sir,
3 you will be here until the turn of the century.

4 Now, to an extent the role of the
5 doctors and the nurses and I would say even to an
6 extent the role of the Hospital itself are subsumed
7 in the public interest. You have two sets of players
8 here. You have the actors. Now the actors were the
9 police and the Crown. Those are the institutions
10 that did or did not do something. Everyone else,
11 Miss Nelles, Mrs. Trayner, the doctors, the nurses,
12 the Hospital and the parents were only affected
parties.

13 They didn't undertake the investigation.
14 They didn't perform the investigation. And what I
15 see happening is that each one of those groups of
16 people have some sort of very special direct and
substantial, albeit limited, interest.

17 You have asked other counsel this
18 morning were they concerned at all with respect to
19 the fight between Nelles and the police. And I
20 adopt Mr. Strathy's submission. I don't think it
is that narrow. However, I will come to that in a
21 moment. I would like to respond on behalf of the
22 Hines family in this way: we are certainly not
23 interested whatsoever in that fight in any direct

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G-8

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2 and substantial manner.

3 The fact is that both the police and
4 Miss Nelles are represented by extremely able counsel.
5 They hardly need the help of any other counsel. So
6 our interest in that fight is a very limited interest.
7 We are only interested in it to the extent that it
8 reflects directly upon and in like regard with respect
9 to what was done or not done or what should have been
10 done in respect to their investigation of the Hines
11 child only, and it seems to me that if we are perhaps
12 granting standing it has got to be under those ground rules
13 because that is the only thing that affects the
14 very direct interest that I have been talking about.

15 If, Mr. Commissioner, you interpret
16 the terms of reference, and it is up to you to
17 interpret them, very narrowly, then I think that
18 certainly the parents and probably the doctors and
19 the nurses as well have an extremely tough road to
20 hoe in convincing you that they have any interest
21 at all let alone a direct and substantial interest.
22 And by direct and narrow I mean if it is your view
23 that you are looking at the investigation and
24 prosecution as it relates only to the four deaths,
25 then I think that is the end of the debate. It is
finished right there. I have nothing further to say.



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He doesn't talk about Cook, Miller,
Estrella and Pacsai. He talks about all the deaths,
all 36 occurring in that time frame.

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21 MR. TOBIAS: I hope that that was merely
22 a collateral point discussed within the context of
only to what point in time your inquiry goes.

23 If I misunderstood, if you took that as

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being a decision on the whole scope of Phase II -

3 THE COMMISSIONER: No, no, but obviously
4 the investigation, the deaths and the prosecution of
5 charges arising out of deaths of the above mentioned
6 four infants - now that you can still take under
7 consideration of course the deaths of the other
8 children. That might well be a matter that one would
9 be interested in before laying charges arising out of
10 the deaths of the four infants, but it is only the
11 four infants that are directly involved in the
12 circumstances surrounding the institution of criminal
13 charges.

13 MR. TOBIAS: Mr. Commissioner, with
14 respect I would urge upon you another interpretation
if you will humour me just for another few minutes.

15 THE COMMISSIONER: All right.

16 MR. TOBIAS: Because I would rather
17 deal with all of the things that precede those words
18 because I think that they help you interpret those
19 words.

Now in particular I have already
20 referred to paragraph one. Paragraph two I think
21 is very clear in that it says that concern has been
22 expressed regarding the functioning of the justice
23 system in respect of the instituting and prosecuting

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G-11

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2 of charges in relation to the said deaths. Now he
3 can only be referring to the deaths he has already
4 referred to in paragraph one which are all the deaths .

5 Mr. Labow pointed out to you and I think
6 that on page one of the terms these are probably the
7 key words, that there is a need for the parents of
8 the deceased children, and I think it is worthy to
9 note that he has specified parents - he separated
10 them out of the public domain and thought they were
11 worthy of specific mention - for the parents of the
12 deceased children and the public as a whole to be
13 informed of all available evidence as to the deaths,
14 again referring to all 36, and the proceedings
15 arising therefrom...

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Now those words are interesting.

Proceedings arising therefrom clearly relates to the
charges against Susan Nelles which coincidentally it
is true related only to four infants.

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2 But it was all 36 which gave rise to those four
3 charges and it was an investigation in a global
4 sense of all 36 which led to the delay of those four
5 charges. The fact that similar fact evidence was
6 led, with respect to a great number of these infants,
7 Hines included, indicates that they had to have been
8 part of the investigation, which raises a very
9 interesting question: certainly one of the things
10 that you are going to be looking at, and I think your
11 words were this morning to Miss Kitely: Is she
12 interested in whether or not they should have
13 investigated the matter better? Well, there is
14 a strong argument to be made, depending on what comes
15 out in the evidence, and I have no pre-conceived
16 position or notions about it, but there is a strong
17 argument to be made that if the investigation had
18 been handled differently, if it had been a longer
19 investigation, if it had been a more thorough
20 investigation, we may very well have had more than
21 four charges, with a different result at prosecution.
22 So that is clearly one of the questions that you have
23 been looking at.

24
25 Now, when we get to paragraph four,
the way I read paragraph four is this: The last four
words --



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2 THE COMMISSIONER: Just a minute, Mr.
3 Tobias. There may be something about a small room
4 that makes it easier for me to see what is going on.
5 I consider it is exceedingly poor manners for somebody
6 to be reading a newspaper in the place of argument.
7 Obviously the article is so engrossing that --
8 All right, Mr. Tobias.

9 MR. TOBIAS: I don't mean to forgive
10 the transgression, but the man probably thinks the
11 newspaper is far more interesting than my argument
12 and I dare say he is probably right.

13 THE COMMISSIONER: I am not prepared
14 to pronounce on that matter at all. I was pronouncing
15 only on manners and I don't mean that seriously.

16 MR. TOBIAS: When we get to the last
17 six words of the above mentioned four incidences
18 taking into account everything I have said up until
19 now about the specific wording used in the preamble,
20 what I am saying is this: I don't think those words
21 are meant to limit or constrict your interpretation
22 of all of the foregoing. I think they are descriptive
23 words only, indicating specifically what charges he
24 is referring to and clearly they are charges relating
25 to those four particular infants, because those were
the only four charges laid, but to read those words,



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2 as indicated, that the scope of your Inquiry is only
3 with respect to the investigation of those four
4 deaths, which led to the laying of charges, I think
5 is to put far too narrow of an interpretation on it,
6 because if we are looking at the investigation I say
7 that we have to look at the investigation globally,
8 otherwise it doesn't make any sense whatsoever.
9 You can't dissect part of it out and say that we are
10 going to enquire about that particular aspect, but not
11 others.

12 Because of that I would argue, and this
13 is the part of Mr. Labow's submission, that I can't
14 in conscience accept. I would argue that theoretically
15 all three sets of parents, each and every last one
16 of them, have a direct and a substantial interest in
17 the questions concerning the investigation of their
18 child's death. It would be the easiest thing in the
19 world to put them into some sort of hierarchy or
20 characterize them. You could say, well, the most
21 direct interest is obviously "Miller, Pacsai and
22 Estrella" and after that the second most direct interest
23 is all of the children wherein similar fact evidence
24 was led and somewhere at the tail end you have the
25 others.

26 Let's look at it from the point of



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2 view of those parents whose children did not form the
3 substance of the charges and who were not even
4 introduced at the preliminary in similar fact evidence.
5 Are we telling them they have any less interest in
6 knowing what was done, in order to find out how their
7 baby died? Perhaps they may, in fact, have the most
8 to complain about, because they may, at the end of the
9 day, be the ones who are saying "If you had only
10 looked, if you had only paid more attention, if you
11 had only been more thorough we would have been part
12 of those charges." So I clearly reject any attempt
13 whatsoever to somehow distinguish between the groups.
14 I think they all have an interest.

15

16 I might also point out, with respect to
17 the Hines family, in particular, and having said
18 that everyone has got to be treated on the same
19 footing and that we shouldn't characterize the families,
20 I have to step back from that just for a second. It
21 is a small point, but a point that I think is important
22 to make.

23

24 I said earlier that all of the parents
25 have a very direct and not an abstract interest and
26 how they deal with these institutions in the future,
27 at least the Crown, but we also have to remember part
28 of your deliberations, you can't get away from it.



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You are going to be looking at the Hospital, at the Hospital Administration, at the doctors, at the questions of were they asked to co-operate, did they co-operate, did they do everything they could to give us a fair chance to find the answers here.

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I would like to remind you, sir, that my clients still have a child whose care they entrusted to that institution on a regular basis.

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THE COMMISSIONER: I know, but that, Mr. Tobias, that argument simply isn't available to you. I don't know how many patients in the Hospital there are now and all of those people would have as much interest as your client.

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MR. TOBIAS: I recognize that, sir, but it is a horrible thing to say really and it is an unfortunate and a cruel term of circumstances that those people can't come here and ask for standing. Thank God their children didn't die. I would think they are ecstatic that they don't have standing.

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THE COMMISSIONER: The point I am

making on that argument of yours is they have as much right of standing as your clients.

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MR. TOBIAS: They fall somewhere in between, the abstract interest only and the very direct and substantial interest that I have been

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talking about. You can't say their interest is only abstract, but it is a collateral point. I am not pursuing it. I think it is important that you understand it and that you understand what I am saying to you.

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THE COMMISSIONER: Isn't there a

difference between Phase I and Phase II? Phase I is what happened to their children. They have a direct interest and a very particular interest in what happened to their children and a question of what happens after is no more than the interest that any victim has in any, if there is a crime, in any crime that is committed.

MR. TOBIAS: Let me approach it this

way: I think where you err, sir, with great respect, is in assuming that all that happened to the child was that the child died. Something more than that happened to the child. The child died in circumstances where, for one reason or another three years down the road, no one has provided an answer, no one has provided accountability. That may just be the circumstances of the case. It might defy our Lord, himself, to answer these questions, however, the point is that it may very well be that those who are in charge of seeing that perpetrators of wrongful acts



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are punished may have been errors in judgment, which led to that end result. I say that the fact that they haven't been given the answers and the fact that no one has been brought to justice is as much a part of the event as the death itself. I don't think you can distinguish the two. I don't think you can cut it off at saying your interest only goes to whether or not your baby was murdered, and that is the end of the equation, and you have no interest beyond that. Surely they have a very direct interest in what was done about the fact that the baby was murdered. Surely that is different than the man in the street. That is why in our profession now we are engaged in a great debate about the role in the victim -- of the victim, rather -- in the justice system and whether or not the victim should be able to address the tribunal, the trier of fact.

I think there is a distinction there and I think that it is exceedingly important for you, it is probably more important for you to recognize that distinction than for anyone else for this reason: Mr. Scott once urged upon you, and I think he was entirely right, whether or not your report is a good report is only half of the problem. It may be that the very best report that you, with your considerable



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2 talents are able to bring to bear, but if it is not
3 perceived by the public to be the result of fair and
4 completely open and full deliberation then, although
5 it may be an excellent report, it will all be for
6 naught, because it just won't have the kind of
7 public acceptance that every single person in this
8 room hopes that it will have, and I think that the
9 difficulty is this. It is very difficult to give
10 that perception of openness and fairness and stress
11 these words "Fulness and completeness" if you exclude
12 from the deliberations in Phase II those people who,
13 unquestionably were most directly affected by those
14 particular events.

15 It is because of the critical nature
16 of that public perception that we cannot simply afford
17 to say in an open and public forum, well, I am sorry,
18 we would like to give you the chance to participate,
19 but time doesn't allow. If I may say a word in your
20 defence, sir, although I hardly think you need my
21 defence, but an awful lot has been said about how
22 long the process has been: "My goodness, it's been
23 a year. Isn't that extraordinary?" But I think what
24 all too often the media and the public forget is how
25 complex a task it is. In the end the fact that it
went a year may be something very much in your favour.



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2 It may have gone on a lot longer had
3 you lost control of it or not conducted it in the
4 manner in which you have, but I simply don't think
5 that we can allow considerations of time and stream-
6 lining to shut out these people. I think that is just
as important as the point I opened with, sir.

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Thank you.

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THE COMMISSIONER: Thank you.

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Mr. Shanahan.

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MR. SHANAHAN: I'm going to let Mr.

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Shinehoft --

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THE COMMISSIONER: Mr. Shinehoft.

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MR. SHINEHOFT: Mr. Commissioner, I am
going to make one or two general comments about
parents' counsel and then I am going to make a couple
of specific comments about Kevin Pacsai and the role
he has played in Phase I and what role he may play
in Phase II.

17

As pointed out by Mr. Labow and Mr.
Tobias, I think it is important that you look at the
Terms of Reference in the Order-in-Council, at the
specific wording. I don't want to belabour the
point, but in the third paragraph it talks about:

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"Whereas the Government of Ontario is
of the view that there is a need for

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"the parents of the deceased children
and the public as a whole to be informed
of all available evidence, as to their
deaths and the proceedings arising
therefrom."

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It would seem to me that if the parents
were to be informed of that the Lieutenant Governor
could have put "and the public, the proceedings arising
therefrom."

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So both the public and the parents are
included in the latter part of that sentence and it is
conjunctive, as opposed to disjunctive. I just point
that out. It may assist you in interpreting what
exactly the Order-in-Council meant.

From a parents' perspective, Mr.

Commissioner, I think there is a difference between
your ability to name names and your ability not to
name names. I mean it in this context: If names were
named and you indicated that Baby A died, as a result
of a deliberate overdose of digoxin administered by
person B, and if the parents felt grieved about the
situation they could make representations to the
Attorney General, they could make representations to
the Police and they would have certain avenues avail-
able to them, however, but by not naming names they



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11 2 don't have any recourse.

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3 4 You are entitled to characterize the
act as an intentional deliberate overdose of digoxin.
4 5 Some people suggest you could even call it murder.

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2 We know that Susan Nelles was arrested and
3 discharged at the preliminary hearing. What
4 position does that leave the parents in?
5 Surely they should be entitled to be involved
6 in the investigation as to what happened,
7 what went wrong if anything.

8

9 THE COMMISSIONER: I am
10 having some trouble with that. The parents,
11 it wouldn't make any difference whether I
12 name names or not as to what the parents rights
13 are. If I were to say that in my view
14 some of these children died of a deliberate
15 overdose of digoxin, would the parents not
16 have a perfect right to say to the Attorney
17 General what are you going to do about it?

18

19 MR. SHINEHOFT: I am saying
20 on top of that they are entitled to be
21 involved in the investigation as to what
22 happened, did something go awry, was the
23 police investigation properly conducted or
24 was it improperly conducted. If you were
25 to say, as I have said previously, that a
certain individual was involved, I take the
position that the parents would have less
of an interest to be involved in Phase II than



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2 if you were not naming names.

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4 THE COMMISSIONER: We are
5 not going into Phase II, we are not in any
6 way going into identity of whoever it was,
7 we can't do that.

8

9 MR. SHINEHOFT: I appreciate
10 that, but we are going to be involved in the
11 police investigation and the conduct of the
12 police and whether it was a proper investigation,
13 and whether it was not; if something went wrong,
14 what went wrong and why it went wrong. That
15 Mr. Commissioner, as I perceive it, is the
16 pith and substance of Phase II. I say that
17 just as a preliminary matter, I think there
18 is a difference between naming names and not
19 being able to name names.

20

21 Now the four children with
22 whom Susan Nelles was charged with Murder,
23 namely Cook, Miller, Estrella and Pacsai, and
24 again the reference is made in the Order in
25 Counsel specifically to those four children,
and at page 2, paragraph 4:

" To enquire into, determine and
report on the circumstances
surrounding the investigation,



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2 institution and prosecution
3 of charges arising out of
4 the deaths of the above-
5 mentioned four infants. "

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7 In that respect I guess my position is a
8 little different than the other Counsel save
9 and except perhaps my friend Mr. Labow, who
I did not know until this morning has been
engaged to represent --

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THE COMMISSIONER: I'm not

sure that he did either.

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MR. SHINEHOFT: ...the Cook

family. But here you have four children, four
deaths which is the critical deaths, if I can
put it that way, that gave rise to a police
investigation. My clients were interviewed
by the police and they may be very well giving
evidence in Phase II.

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THE COMMISSIONER: There

is no question whatever if they do give
evidence that you will represent them at
that time.

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MR. SHINEHOFT: As I think
was fairly point out by Mr. Strathy, I think it
is one thing to be here to understand the



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2 evidence that is being introduced, to understand
3 or comprehend the way the evidence is going
4 in, and then to be catapulted in one day,
5 you get phone call your clients are going
6 to be here and they are going to give
7 evidence. With the greatest of respect I
8 adopt that position by Mr. Strathy, I think
9 there is a difference between the two. So they
10 were interviewed by the police, there is no
11 question about it and they may very well be
12 called as witnesses. There is no question that
13 that death was if not the, one of the critical
14 deaths that precipitated this whole thing.

15

16 It was the chance meeting between the two
17 pathologists, Dr. Cutz, and I'm trying to think
18 of the name of the pathologist that performed
19 the autopsy on Estrella, Mancer I believe his
20 name is, where they offhandedly discussed
21 digoxin levels and then from there they went
22 to Dr. Ellis' office to ascertain the validity
23 of the testing methodology, and then from
24 Dr. Ellis' office the phone call was made to the
25 police, and this is what precipitated the entire
police investigation, Mr. Commissioner. So I
don't have to overstate the importance of Pacsai,



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I believe you have heard all the evidence and you know what this child's involvement has been in the proceedings. All I say is two things. I say that first of all, all parents' Counsel should be granted standing to the second part, but I would say that my position is a little different than the rest of them, if you were to consider granting standing to only one of the Counsel, and those are my submissions.

THE COMMISSIONER: Thank you.

Mr. Shanahan?

MR. SHANAHAN: Yes sir,

Mr. Commissioner. I am aware of a lot that has gone before. I might say at the outset, Mr. Commissioner, that this issue of standing on Phase II that I have - as I think it is my responsibility, I have discussed it with both of my clients, the Dawson family and the Lombardo family too, to have their input here so that they would know precisely what my submissions would be and my submissions would be based upon their real and genuine concern in the matter here.

I might say I have canvassed



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3 as best I could in layman's terms what has
4 been accomplished in Phase I and what the
5 corollary Terms of Reference were in what we
are heading into in Phase II.

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7 I would like to say that
8 the position I take here today, sir, is
9 the position not just taken by myself and
10 my own clients, as I represent, sir, their
11 direct and implicit instructions with respect
12 to what they perceive Phase II will cover
13 and what interest they might have in it.

14

15 I might say, sir, I am
16 concerned I suppose on the one side there
17 is - there can be drafted an argument here, emotionally
18 or intellectually if you like, as to
19 the input the parents should have and why they
20 should be here. I might say if it is
21 perceived on your part you see a limiting
22 factor in that Terms of Reference, the Terms
23 of Reference might fairly exclude some
24 families.

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26 If I could really - insofar
27 as I have adopted much of what has gone
28 before me that I have heard this morning, if
29 I might more specifically refer you to the two



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2 families that I represent here, sir. Many
3 parents here have been made aware of the
4 fact there was a Royal Commission going to
5 be investigating the number of deaths. Many
6 of the families for reasons best known to
7 themselves have never participated, and I
8 don't know what input they had with the
9 police, but many certainly have not seen
10 fit to obtain Counsel and instruct Counsel to be here and
11 I am sure they have their own personal reasons.
12 Both families that I do represent here, sir,
13 have been here represented by Counsel through
14 Phase I. I might say even before I came on
15 the scene quite clearly both the Dawson
16 and the Lombardo family have been vitally
17 concerned about the things that happened.

18

19 If I may refer you more
20 specifically to Mrs. Dawson, it is quite
21 clear that the death of the Dawson child caused
22 tremendous concern within the Hospital itself,
23 and the independent record keeping and note-taking that
24 we have from those times and the communication
25 books and ward books, quite clearly set out
well into March in fact into July, long before
March, that in fact there was a concern here with



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2 the Hospital staff and the doctors about the
3 child's sudden and unexplainable death. Then, sir,
4 you have the mother's concern as well. That is
5 indicated in all the evidence from Nurse Nelles
6 and Trayner here, tremendously concerned, having
7 the wherewithall and insight, or the level
8 of suspicion to be concerned that her child
9 had not died from natural causes. You have
10 heard, sir, the evidence that in fact this
11 was carried through. All agreed she wanted
12 an outside pathologist and she carried that
13 through, had a meeting with Dr. Bunt and
14 accepted Dr. Bunt's evidence, for the sake of
15 argument here this morning as being a proper
16 and more accurate accounting of it. She
17 mentioned to him her concern about medication.
18 You have this lady as well, sir, attending
19 from out of town to give evidence here at
20 this Royal Commission. Again someone chosen
21 not to be represented and even those that
22 have been represented have not availed
23 themselves of the opportunity to give any
24 evidence here, and, as I say I am sure for
25 their own reasons. She has come at great
considerable personal expense, to come here and



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2 give her evidence and you heard the evidence
3 that she gave.

4 I can assure you, sir, if
5 it is any indication, or any merit, or in
6 any way affects how direct and substantial
7 her interest might be, I can assure you, sir,
8 she is vitally concerned in the subject matter
of Phase II.

9 Again, sir, not to be
10 casting about here in any way, shape or form
11 for people who may not have, come up to standard
12 of care or duties or obligations, her
13 matter, sir, is to see through once and for
14 all to see the events through from A to Z.

15 I might say, sir, relating
16 it to the Lombardo family, again a family who
17 perhaps at the time did not express the
18 level of suspicion that Mrs. Dawson expressed
19 but certainly a concern harboured in their
20 own mind and concern that their child had
21 died an unnatural death. That in fact during
22 the course of the Nelles enquiry in which they
23 took a great interest of their own accord and
24 following and then to realize that their child
25 as a result of an Order was exhumed. That



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child was exhumed in the hope of fitting it into a similiar pattern of similiar fact evidence, and lo' and behold for that child Nurse Nelles was not present, and that baby has died at a very quiet time of the year, and in fact there are substantial digoxin readings in her system and the tissues.

Again, sir, people here

who are very concerned knowing perhaps their child is the pivotal baby in terms of leading to the discharge of Nurse Nelles and also aware of the fact that Nurse Nelles is discharged and mindful of this Commission and anticipating fully in this Commission.

Mr. Scott made, in terms

of his submissions as to the recent Court of Appeal ruling, he used the metaphor of this Commission perhaps being a window on events for the parents here and leading perhaps ultimately to a source of reconciliation.

These families here, I might say none of my parents, none of the families that I act on behalf of, are litigating here or even contemplating any litigation. This Commission is going to be the last word for them. What they see and



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2 hear through here will be what they have
3 to carry forward into the future as to what
4 in fact happened to their child and how those
5 deaths were investigated.

6 If in fact it is to be a
7 window on events, not just the events up
8 to this point in time, which they are greatful for and
9 they don't feel there has been any undue limitation as
10 to how the child died, what then we as
11 a society at large and the investigative
12 tools we have at our disposal, what society
13 at large did to follow-up, especially when
14 you say on the suspicion of somebody like
15 Mrs. Dawson, they certainly are of concern
16 and interested in and wish to participate in
17 that discussion of that investigation. I
18 might say to emphasize Mr. Scott's position,
19 what comes forward will be what they will
20 be left with in terms of reaching that ultimate
21 conciliation in their own mind to resolving
22 that and putting those events behind them once
23 and for all.

24 It is an error, sir, to pick
25 up on a point of Mr. Tobias, it is an error when
the Courts found for better or for worse and



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2 with all the difficulties that have ensued
3 from it, our having victims as they are
4 called, victims having an input into the
5 judicial processes. This really, sir, is
6 even broader based than the judicial process,
7 we are not looking for someone to have a
8 sentence that reflects perhaps the degree
9 of occurrence and concern in the victim's
10 life. We are here simply to investigate
11 a broader - the Commission is much more
12 broadly based on the rules of evidence and
13 what we can hear. Now you are hearing more
14 really than a victim, I don't think the parents
15 would want to be called victims, at least those
16 that I act for. We are here for the
17 direct families who had a concern about
18 their health, not so much a victim of a crime,
19 but the health and the care of the children
20 in the custody of the Hospital that is
21 committed to that care and those children coming
22 to perhaps an untimely death. I am suggesting
23 that we won't call them victims, but if
24 you wanted to draw a parallel to the type
25 of rights and the types of participation the
victims have within the judicial process and I



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2 am suggesting to you as well, sir, that the
3 parents' input here and the presentation and
4 their presence here.

5 Finally, sir, the public
6 perception, the perception of their input
7 and the public perception of the time this
8 Commission has gone on. With the greatest
9 of respect, sir. I don't put forward that I
10 read the public sentiment any differently
11 than you. In my submission, to you sir, I
12 don't think at this juncture the Commission
13 having gone as long as it has, Phase II
14 hopefully being as short as it may well be,
15 the public would say that parents of children,
16 specifically the parents if they knew the
17 position of Mrs. Dawson, if they knew the
18 position of Mr. and Mrs. Lombardo; if they
19 knew what they have been through, if they knew
20 the input they have had; the exhumation on
21 the one hand and Mrs. Dawson's own suspicions
22 and carrying them forward. If they knew all
23 that we know and were not dependent on the
24 media of simply what their perception of this
25 Commission was, with the greatest of respect,
sir, I submit to you that they would have no
quibble about saying those parents of 36 that



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participated; those that participated also
that had some input here, to say to them, yes,
you can continue forward, and neither in
terms of time or expense the public would
object at all. I would submit to you, sir,
quite the converse, if the public knew the facts
and stood in the shoes of those people whom
I represent that in fact what they would say
is there really is not only emotionally or
academically, or in the abstract, a right to
be expanded upon about being here, for them
to be here and see this matter through
once and for all that they could put those
matters behind them, I think the public, sir,
would be behind it.

If you think, sir, that

the frame of the Terms of Reference are too
narrow; if you feel, sir, that it is a political
decision that is required to expand them to
allow you to permit the parents to be here,
I ask you sir to seek that political approval
and that, sir, you do get the authorization to
allow the parents in this last end stages
of this Commission, to allow the parents to
be here to see how those citizens that were



I-15

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2 perhaps murdered, how their deaths were
3 investigated and the results that investigation
4 led to.

5 THE COMMISSIONER: Thank you.

6 Miss Thomson, have you anything to say with
7 respect, not to your own position, but with
8 respect to those others who have applied for
standing?

9 MS. THOMSON: No, sir, I
10 don't think I can assist you any further.

11 THE COMMISSIONER: Mr. Brown,
12 have you anything further?

13 MR. BROWN: Yes, I do, sir.

14 THE COMMISSIONER: Fine.

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J-1

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EMT/hr

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MR. BROWN: Sir, in respect to the application for standing by the doctors and the Registered Nurses (not the Association but the individual nurses) I would support their application for standing to the extent that they be allowed to participate when, for example, one of their clients is called to testify before this inquiry, and secondly if evidence is led through another witness, if allegations are made through another witness with respect to any of the individuals, be they nurses or doctors, that the counsel for the nurses and the counsel for the doctors be entitled to cross-examine and to call evidence if necessary with respect to those allegations.

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With respect to Mr. Strathy's application on behalf of Mrs. Trayner I suppose on that basis I would also have to support it since there might well be allegations made and questions of reputation involved which would necessitate either his cross-examination or examination of his own client or the cross-examination of some other witness.

With respect to the application by

counsel for the parents, we oppose their application

for standing. We oppose it not on the basis that the

terms of reference preclude you from considering the



J-2

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2 investigation of children other than the ones that
3 Miss Nelles was charged with. We take the position,
4 sir, that the terms of reference should not be so read
5 It is very true that you are to look into the
6 investigation and the prosecution of Miss Nelles with
7 respect to the deaths of four specific children.
8 However, sir, during the course of that investigation
9 and prosecution other children were considered and
10 as Mr. Shanahan has indicated to you one of them,
11 the Baby Lombardo, played a very important role
12 leading to the discharge of Miss Nelles. So to a
13 certain extent other children will be canvassed and
14 I believe the terms of reference support that
15 interpretation, sir.

16

17 We oppose the application by the parents,
18 however, on the basis that they do not have a
19 substantial and direct interest in the subject matter
20 that requires them to be represented by separate
21 counsel.

22

23 We take the position, sir, that their
24 interests can be adequately represented by Commission
25 Counsel. We acknowledge that the parents of these
children do stand in a different position to some
degree from any member of the public since some of
the children may be considered victims of crime.



J-3

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2 Notwithstanding that we take the
3 position, sir, that that interest is not sufficiently
4 substantial nor direct to require them to have separate
5 representation. We take the position that Commission
6 Counsel has a role to play in representing their
7 interest. If they have any concerns they can certainly
8 make them known to Commission Counsel, and since this
9 is really, sir, a question of degree and the exercise
10 of your discretion, it is our submission that their
11 interest would be adequately represented by Commission
12 Counsel and they do not meet the test of substantial
and direct interest.

13 Those, sir, are our submissions on
standing.

THE COMMISSIONER: All right.

15 Mr. Percival?

16 MR. PERCIVAL: Mr. Commissioner, you
17 have expressed certain concerns during the course of
18 argument. We share those concerns. It is your
19 decision: we leave it to you, sir.

THE COMMISSIONER: All right.

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J-4

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2 clients, the doctors, that he raised an issue during
3 his cross-examination of Dr. Bunt which had to deal
4 really with the responsibility for the deaths becoming
5 known, on who lay the responsibility of bringing to
6 light the circumstances that existed in the Hospital.
7 That was raised by him during his cross-examination.

8 There will be Coroners testifying, and
9 to put it bluntly, I think Mr. Ortved, the thrust
10 of his cross-examination, was to shift the responsibility
11 for the failure to identify a problem and to bring it
12 to the attention of the appropriate police authorities
13 from the doctors who were there on a day to day basis
14 at the Hospital onto the Coroners, and that is a
15 matter that I am sure will be pursued during the
16 second Phase to the extent that Coroners or doctors
17 are testifying, and insofar as it relates to the
18 investigation that may be circumscribed to some
19 extent.

20 So I say this at this point, that to
21 the extent that issue may again arise in Phase II
22 then he may well have an interest in cross-examining
23 certain witnesses where that point will be addressed.
24 To that extent I make known that situation now so there
25 is no suggestion at a later point that he has been
prejudiced in any way.



J-5

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Other than that I have no position
with respect to any of the parties who request
standing.

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THE COMMISSIONER: Mr. Lamek?

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MR. LAMEK: Mr. Commissioner, first
with respect to something said by my friends, Mr.
Shanahan and Mr. Tobias, I should like to be plain
about this that although considerations of time and
proceeding quickly to an end are properly important
to you, it should be clear if there is any question
at all that it is known to all of us that is a
secondary consideration and very much so, and that
paramount is a determination to have a full, fair,
public hearing with complete rights of audience
given to everyone who can establish a reasonable
claim to participate.

The track record on Phase I I suggest
can leave no doubt in anyone's mind: doubts as to
standing, and even I may say as to funding were
resolved in favour of the inclusion of the parties
rather than of their exclusion.

I know that you, sir, will not base
any decision on standing on considerations of time
and expediency, and that should not be a matter of
concern to anybody.



J-6

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2 With respect to Mr. Shanahan's
3 suggestion that perhaps a further amendment to the
4 Order in Council be sought to permit participation of
5 parents, may I say respectfully I agree with my friend
6 Mr. Brown that the real obstacle, if there be one
7 to the participation of parents, lies not so much in
8 the Order in Council as in the Public Inquiries Act
9 under which this inquiry is proceeding, and the
10 provision in Section 5(1) that in order to have the
11 right to participate by the giving of evidence,
12 calling and examining and cross-examining witnesses,
13 someone must first satisfy the Commission that he
14 has a substantial and direct interest, and it is on
15 that question I think that the question of standing
16 of the parents or anyone else falls to be determined.

17

18 May I respond only to applications
19 for standing by four groups? First, the doctors and
20 the 39 nurses represented respectively by my friend
21 Mr. Ortved and my friend Miss Kitely. In my
22 submission each of them has shown an arguable basis
23 for standing. There has been some reference in the
24 course of submissions to limited standing.

25

26 I don't read the Act as contemplating
27 any such kind of standing at all. What the Act does
28 contemplate and what in my submission it is essential



J-7

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2 to bear in mind is that there be a careful definition
3 of the direct and substantial interest that standing
4 is designed to protect, and a firm resolve on the part
5 of the counsel for those groups, and on your part,
6 sir, to restrict participation to that interest as
defined.

7 I don't mean to be offensive, believe
8 me, but I confess that I have wondered from time to
9 time during Phase I whether Nurses Nelles and Trayner
10 were represented at least in part by Miss Kitely and
11 her partners. The course of her questions has led
12 I think to the kind of questions you put to her
13 this morning.

14 It is essential in my submission that
15 it be clear from the outset of Phase II and that there
16 be rigorous adherence throughout Phase II to the
17 principle that a grant of standing to a particular
18 interest is not a mandate for a roving Commission to
19 explore any and every piece of evidence however
20 remote that evidence may be from the particular interest
21 for which the standing was granted.

22 Subject to that, sir, it is my
23 submission that my friends Mr. Ortved and Miss Kitely
24 have made a reasonable case for standing for the
25 individual and doctors and nurses they respectively



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2 represent.

3 With respect to the application for
4 standing for the Registered Nurses Association of
5 Ontario I confess that I, sir, do not see that the
6 Association has a direct and substantial interest
7 in the subject matter of Phase II.

8 My friend Miss. Kitely says that the
9 nurses were involved in the investigation and therefore
10 the collectivity of nurses should have some standing
11 here. With great respect I cannot follow that.

12 If I as a lawyer were present in Court
13 when my lawyer colleagues and opponents were
14 unfortunate enough to be present when some unpleasant
15 demonstration or violence broke out, I would be involved
16 in that too, and I would be involved if I were present
17 in a place where lawyers are present. I might be
18 injured. I might be interviewed by investigators.
19 I might be called as a witness in some prosecution
20 or proceeding. I might be happy or unhappy with the
21 treatment that I received in that process. I might
22 be content or I might be resentful of that. I simply
23 cannot see that it be a matter of professional interest
24 for the Law Society.

25 In short, sir, I simply don't see that
nursing issues which are of kind, as I



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understand it, of the Association, arise in Phase II. I was never sure that they properly arose in Phase I but I feel strongly that they do not in Phase II, and therefore in my submission no basis has been shown for the granting of standing for the Association in Phase II.

Finally, with respect to the parents, sir, it is a very difficult matter because we all must have -

THE COMMISSIONER: You said finally?

I don't think you dealt with Mrs. Trayner.

MR. LAMEK: No, I don't propose to make any submission with respect to that, sir.

With respect to the parents it is a very difficult question because we all must have - indeed we all do have - the keenest sympathy with the position of the parents with relation to this whole process.

I confess to having very great difficulty with the proposition that the parents' interest in law enforcement and the administration of justice even in cases which affected their children or arose out of matters affecting their children is in any way different from that of the public at large.



J-10

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2 I concede that they are interested in
3 what happened. I concede that they are intensely
4 and keenly interested in what happened. In my
5 submission to be interested in what happened is not
6 what is contemplated by the Act which calls for an
7 interest, substantial and direct, in the subject
8 matter of the inquiry.

9 In Phase I I happen to believe that
10 it was legitimately recognized that the parents of
11 Baby X had an interest more acute and different from
12 the interest of anyone else in the world in knowing
13 what happened to Baby X; how and by what means that
14 child came to its death. Whether the police did
15 a proper adequate job of investigating the death,
16 whether their search led them in the correct direction,
17 whether the prosecution was properly conducted,
18 whether it ever should have been conducted at all,
19 are matters of great public concern. But I am
20 obliged to say, sir, I don't see the special position
21 of parents with respect to those matters and therefore
22 in my submission the applications of Counsel on
23 behalf of parents for standing in Phase II should be
24 rejected.

25
26 THE COMMISSIONER: All right. Thank
27 you.



J-11

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2 I will reserve the matter and I will make a ruling on
3 it at least by early next week.

4 I want now to read a statement with
5 regard to the application to hear argument in Phase
6 I in camera.

7 As has been stated this matter has been
8 released to counsel because it is important to
9 counsel to know how they are to prepare their argument.
10 I want to make clear the reasons for reaching the
11 conclusion that I have reached and in this public
inquiry to make those reasons public.

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2 We are shortly to proceed to argument
3 in Phase I. Mr. Hunt for the Attorney General asks
4 that part of that argument be heard in camera. The
5 circumstances are as follows:

6 Phase I is an investigation into
7 "How and by what means" 36 children, who died in the
8 Hospital for Sick Children, came to their deaths.
9 The Court of Appeal has ruled that in my Report I
10 may not, if I should find that the cause of death
11 was an overdose of digoxin, identify the administrator.

12 The argument that Mr. Hunt seeks to
13 have in camera is that which relates to the identity
14 of the administrator.

15 Mr. Thomson, counsel for one nurse,
16 supports him and goes further; he argues that no
17 argument should be received at all which relates to
18 identity. In this he is supported by Mr. Brown,
19 counsel for another nurse, but if such evidence is
20 to be received Mr. Brown asks that it be in public.

21 Counsel for the R.N.A.O. and many
22 other nurses takes no position on either issue. All
23 other counsel who participated in the argument oppose
24 both proposals.

25 I can shortly dispose of Mr. Thomson's
motion. As I have said, I am required to find out and



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2 report on how these children died and the evidence
3 of identity has been received at least partly to that
4 end.

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6 It may help to characterize the deaths,
7 i.e. whether they were the result of digoxin poisoning
8 or not and if the former, may determine whether that
9 poisoning was accidental or deliberate. I may not
accept the argument, but it is at least arguable and
must be received.

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11 Mr. Hunt's motion stems from the concern
12 felt by all of us - the desire to avoid in this very
13 public Inquiry needless damage to individual
14 reputations.

15

16 While some of the evidence may have
17 already pointed in a certain direction, counsel may
18 in argument focus that evidence more precisely upon
19 one or more persons with a view to showing that the
20 presence of that person or persons at the critical
21 time of each death demonstrates a pattern from which
22 an inference of digoxin poisoning can be drawn.

23

24 It is very tempting to accept the
25 proposal. The media will understandably report every
allegation made against every individual person and
the public may treat those allegations as fact.

Whether they do or not, the very real danger can be

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2 avoided completely by in camera hearings.

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4 Notwithstanding the great potential
5 advantage, I have come after much reflection to the
6 conclusion that I must reject the proposal.

7

8 First and foremost, this is a public
9 inquiry. The Attorney General upon the introduction
10 of the Order-in-Council establishing the Commission
11 stated to the Legislature:

12 "....we are of the view that a full public
13 inquiry is the only method available to
14 ensure a full public airing of all the
15 facts referred to in the Terms of
16 Reference.

17 The deaths, the legal proceedings which
18 follow the deaths and the subsequent
19 enquiries and investigations, some of
20 which have not been made public, have
21 left unanswered questions of great
22 public concern.

23 It is in the interests of the parents of
24 the children, the dedicated personnel
25 at the Hospital for Sick Children, and
the administration of justice generally
that the many issues raised, to the
extent that it is humanly possible, be



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2 "dealt with in a public forum."

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The Public Inquiries Act provides as

4 follows:

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"All hearings on an inquiry are open to
the public except where the Commission
conducting the inquiry is of the opinion
that,

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(a) ...

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(b) Intimate financial or personal
matters or other matters may be
disclosed at the hearing that are of
such a nature, having regard to the
circumstances, that the desirability of
avoiding disclosure thereof in the
interest of any person affected or in
the public interest outweighs the
desirability of adhering to the principle
that hearings be open to the public,
In which case the Commission may hold
the hearing concerning any such matters
in camera."

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That appears to give me authority to

hold in camera sessions, but clearly the onus is

upon those who seek to have them, and I cannot find

the onus satisfied in these circumstances.



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2 The Commission has not received any
3 evidence in camera (although some argument as to the
4 reception of evidence has so been conducted), and
5 inevitably the public conception of the integrity of
6 the Commission will be adversely affected if we now
7 retreat behind closed doors to discuss the validity
8 and importance of that evidence.

9 I may be restricted somewhat in what
10 I can say in my Report, as to the manner in which I
11 reached my conclusions, but if the argument leading
12 up to the Report is not open to the public, their
13 opportunity to judge the validity of those conclusions
14 will be seriously hampered and many members of the
15 public might for that reason reject those conclusions
16 out of hand.

17 I read my instructions at the beginning
18 as dictating that all proceedings of this Commission
19 had to be public. There have been some unfortunate
20 consequences of that decision and I regret them. I
21 can only say that the consequences of the opposite
22 decision would have been worse.

23 There is another reason, and not so
24 important, for rejecting the motion and that is its
25 impracticability. Each counsel would have to arrange
his argument so that he could give part of it in public



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and part of it in private. Some of it would be very
difficult to classify in advance and there would
necessarily be a long separation of the two parts unless
we were prepared with each counsel to move in and out
of camera, a most disruptive process. These problems
have been overcome with great co-operation from all
counsel which I am sure would have been forthcoming
notwithstanding the opposition of the vast majority to
the proposal.

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Nevertheless, the argument would have
become much more complicated and might have suffered
in consequence.

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While I reject the proposal, it does
not of course mean that counsel are totally free to
say anything to relating to an alleged administrator
of poison. Counsel will appreciate that every part
of their argument must relate to something I can
report upon and that generally is the cause of death.
Counsel should bear that in mind in the course of
preparation and delivery of argument. I shall try
to be vigilant and I hope that counsel for the persons
affected will take timely objection when there is
a transgression.

Finally, I have a word of advice which
I trust will not be misunderstood or resented. Counsel



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must, of course, act in the interests of their clients but there is never any merit - with me at least - in overstatement. Here, because of the very public nature of the case, extravagant language should be meticulously avoided. It will do no good for the cause of counsel's client; it may do great harm to the reputation of parties and indeed to the Commission itself.

We will rise until 2:15 and we will start the argument on Phase I.

---Luncheon adjournment at 12:45 p.m.



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2 --- Upon Resuming

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THE COMMISSIONER: Yes,

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Mr. Lamek.

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MR. LAMEK: Mr. Commissioner,

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before we finally get to argument on Phase I
there are a couple of matters of evidence on
Phase I, if I may.

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Sometime ago, a couple of weeks ago, Mr. Tobias and I spoke to Dr. DeSa, who you will remember is the author of the death report which was part of the Atlanta Study on Pathology and sought clarification of one paragraph in his report. He gave us that clarification on the telephone and undertook to write, setting it out in a letter which he did. I have circulated that letter to all Counsel with a request that anyone let me know if they had any difficulty about the letter being filed as an Exhibit. I have heard from no one. I ask that I tender that, the letter of May 11th from Dr. DeSa to me as the next Exhibit.

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THE COMMISSIONER: 421.

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--- EXHIBIT NO. 421: Letter from Dr. DeSa.

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MR. LAMEK: I give no undertaking that this next one will be the final Exhibit of

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Phase I. I suspect it may be. You some time ago, sir, asked that the Coroner's investigation statements, which had not previously been filed, be now filed, and again they have been accumulated into a bundle and copies have been distributed to all Counsel and I ask, please, that that bundle be marked as the next Exhibit.

THE COMMISSIONER: That will

be 422.

--- EXHIBIT NO. 422: Coroner's investigation statements.

MR. LAMEK: I am told by

Ms. Cronk that we are still missing some of these investigation statements. When they become available, again we will furnish them to Counsel and tender them.

THE COMMISSIONER: Thank you.

What was the previous one? Do you remember the number?

MR. LAMEK: 150.

THE COMMISSIONER: There is a distinction. I can't remember it. We had an Exhibit 150. These were the ones in the ordinary course 150, and 422 will be the ones --



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MR. LAMEK: None of us can now remember, sir, why they came in two bundles in that way.

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THE COMMISSIONER: I think it was because, and I could be wrong, but I think if you look at them you will find that Exhibit 150 were all ones which were reported to occur in the ordinary event.

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MR. LAMEK: Yes.

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THE COMMISSIONER: And the ones in 422 are ones that I think may have been either in the course of the preliminary enquiry or after it was over or something of that nature. Some day you can find that out for us, could you, Mr. Hunt?

MR. HUNT: Yes, I will.

THE COMMISSIONER: -- What

the reason was. That I think will be the answer. 422 for the second bundle of Coroner's investigation statements.

ARGUMENT BY MR. LAMEK

MR. LAMEK: Mr. Commissioner,

on June 21st, 1983, I made an opening statement in which I outlined the course that I proposed to follow in adducing evidence in Phase I of

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2 your enquiry. I tell you, sir, it was a
3 salutary experience as these exercises often
4 are and I recently went back to remind myself
5 what I had then said. I would be grateful if
6 you and if everyone else in this room refrain from doing
7 that and if enthusiasm cannot be restrained
8 then I would be grateful if people would
9 refrain from reminding me of some of the
things that I said.

10 Certainly the naivety of
11 my optimism in predicting that the medical
12 evidence might be completed by the end of
13 July last year was very quickly exposed on
14 Mr. Cimbura, the very first witness, who spent
15 the first week in the witness box giving
16 basic evidence about doing digoxin assay
17 techniques. In my own defense I can only
18 say that I had heard someone, who I will
19 not name, express the view that the entire
20 enquiry will be completed in six months, and
guided by--

21 THE COMMISSIONER: The first
22 time in my life that I agree with the Court
23 of Appeal.

24 MR. LAMEK: --guided by my

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2 unfailing respect for the opinions of members
3 of the Court of Appeal, I was proceeding
4 on June 21st, 1983 on the assumption that
5 that schedule was attainable and it was not
6 to be the last time my faith in curial
7 infallibility was shaken since that time.

8

9 In other respects though, sir,
10 the observations that I made a year ago
11 proved a little more accurate and I hope at
12 least I lived up to some of them.

13

14 In the peroration of that
15 opening statement I said this, and it is
16 found at pages 41 and 42 of volume 1. I
17 said:

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19 " Mr. Commissioner, you are
20 embarking upon an enquiry
21 of enormous complexity. One
22 cannot say where all this
23 evidence may lead, and
24 despite all the work that
25 has been done today by others
 and despite all the publicity
 that's attended the events
 which are the subject matter
 of the Commission, one can



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2 have no preconceptions of
3 where this trail of evidence
4 will end.

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From what I know of the evidence

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that we are likely to hear,

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I have to say that I approach

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these matters in an attitude

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of puzzlement. I can only

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say that I intend to bring

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before you, sir, all

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evidence to assist you to

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determine and to assist the

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people of this Province to

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understand what happened at

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the Hospital for Sick Children

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and what happened in the

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investigation of those events

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and in the prosecution of

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Miss Nelles. "

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I make no apology whatsoever for having described
the Enquiry as one of enormous complexity.

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Miss Cronk and I, with the
unfailing support and assistance of commission
staff have, indeed, attempted over the course of

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2 11 months, to place all available relevant
3 evidence before you. Over the next couple
4 of days Miss Cronk and I will deal with
5 much of that evidence, but before I turn
6 to any of it, sir, I hope I may be permitted
7 to say a couple of things about the manner
8 and the atmosphere in which this enquiry
has been conducted.

9 We all recognized from the
10 very beginning that the task that we were
11 about was one in which there was the most
12 intense public interest and was one which
13 could profoundly affect the lives of people
14 and of institutions. Perhaps uppermost in
15 all of our minds was the anguish of the parents,
16 whose children had died, and who wanted, indeed
17 needed to know, how and by what means they
18 had died. We were conscious too of the
19 concerns at and about the Hospital for Sick
20 Children, the concerns of the medical nursing
21 and administrative staff of the Hospital, who
22 had lived and worked with the question of what,
23 indeed, had happened on the cardiology wards over
24 the period from the summer of 1980 until March
25 of 1981 and had done so in the unrelenting light



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2 of success of investigations and public
3 questioning, and we were conscious too of
4 the concerns of the public whose confidence
5 and pride in a great hospital appeared to
6 have been badly shaken.

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In the performance of the task choices
had to be made from time to time between competing
interests, and choices of that kind where the interest
of one party was subordinated to another interest can
never by their nature be acceptable to everyone. Those
whose interests are subordinated feel aggrieved, and
the public on the basis of more or less complete
information forms a judgment commending or condemning
the choice. I do hope though that to all who have
been intimately involved in the proceedings of this
Royal Commission, whether as parties or as counsel or
as regular representatives of the news media, this much
at least is clear, that at no time have the rights,
the legitimate interests or the reasonable expectations
of any person or group been treated lightly in a
cavalier fashion or without respect for consideration.

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2 I say that, sir, not in any spirit of
3 self congratulation or by way of defence or accolasia,
4 but I know that you, sir, have never given anything
5 but the most anxious consideration to the resolution
6 of any conflict between clashing interests in these
proceedings.

7

8 So far as concerns Miss Cronk and
9 myself we have attempted openly to disclose in
10 advance to each witness and to his or her counsel
11 any information in our possession which might be
12 damaging to or might call for an explanation from
that witness.

12

13 I know that according to our likes
14 we have struggled to be fair to everyone, and I
15 suppose that knowledge should be enough and to be
16 comfortable to say of the poet: "That one's strength
17 is the strength of 10 because one's heart is pure".
18 I am compelled to say that I have been from time to
19 time stunned by accusations that we have been con-
20 ducting a "witch hunt" in these proceedings. That is
21 the word that has been used and it has a fine emotive
22 ring of outrage to it. I reject it utterly and I
23 reject this suggestion that these proceedings have
24 been callously stage managed so as to direct attention
25 unfairly to particular persons or groups. Miss Cronk



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2 and I have not created evidence, we have dug for it
3 and we have adduced it openly exposing it to cross-
4 examination by all in the hope that with whatever
5 substance it may have when it emerges from that
6 process it may prove of some assistance to you in
7 your difficult task.

7

8 I regret profoundly what has gone on
9 here should have been seen by some as unfair or un-
10 feeling. If I have said or done anything to feed
11 that perception I regret that even more. I can only
12 say it had never been the intention of anyone concerned
13 with this Commission to speak, to act unfairly or to
14 create any impression of unfairness.

13

14 I referred a moment ago, sir, to the
15 information which has been available to the public
16 and that leads me to say something which I believe
17 needs to be said about the way in which the news
18 media have covered this very complex matter. Beyond
19 question this has been the most complex matter.
20 Beyond question this has been the most public public inquiry
21 ever held in this country. Since the day we began
22 over a year ago there have been virtually daily
23 reports, in print, on radio and on television of our
24 proceedings.

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24 The presence of television cameras

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2 at our hearings has been regarded as a major departure
3 in this jurisdiction, although it was not entirely
4 novel as you, sir, know from Mississauga. It was
5 nonetheless regarded as an experiment. It would not
6 be appropriate for me to comment on the broadcast
7 use that has been made of the video tapes made here,
8 but I can I believe I should say that in my view the
9 in-hearing room presence of cameras and audio tape
10 recorders has not been a disruptive or destructive
11 element here. There have been occasional complaints
12 that one or another counsel has been playing to what
13 Mr. Roland in a happy tone of phrase called the
14 "Electronic jury", whether the complaints were
15 justified is not for me to say but I am not persuaded
16 that the propensity to play to the news media is
17 either heightened or reduced by the particular news
18 media audio or video which happens to be in attendance.

19 I hope that no witness has felt
20 intimidated by the thought of being on camera. To give
21 evidence at all must be an extremely stressful
22 experience as perhaps we lawyers with our long
23 familiarity with the process are too prone to forget.
24 For some of the witnesses who appeared here the
25 experience must have been extremely gruelling and I
hope sincerely that the emotional wear and tear



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2 on those witnesses was not aggravated by the presence
3 of cameras.

4 So far as concern of the content of
5 news reporting I say only this, sir, that although I
6 have on two occasions voiced complaints about press
7 comments which were based on blatantly wrong information.
8 I believe that this Commission and the public have been
9 generally well served by balanced responsible
10 reporting particularly by those who have expended the
11 resources, the time and the effort to follow closely
12 a long and very complicated story.

13 Now, Mr. Commissioner, as you have
14 observed in another context, the interests represented
15 before you in these proceedings are many and varied.
16 The potential for clash and conflict has been present
17 throughout. Indeed whenever this number of lawyers
18 is contained at close quarters for an extended period
19 of time one must expect occasional irritability,
20 heated exchanges and confrontation.

21 One of the truly remarkable and
22 gratifying aspects of these proceedings has been the
23 infrequency of such incidents. Counsel have not
24 always agreed with you, or you with them, or they
25 with each other, and that is as it must be in the
system under which we operate, but the very high level



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2 of mutual respect which has prevailed is in my
3 submission certainly worthy of note.

4 It is not my purpose to embarrass
5 or to flatter you, Mr. Commissioner, but even in a
6 public inquiry counsel is permitted occasionally to
7 say nice things about his client. I say that the
8 almost total absence of acrimony from these pro-
9 ceedings is in very large part a product and a
10 reflection of the patient good humour with which you
11 have conducted this Inquiry. It has been on your part
12 a palpable desire of reason and fairness and it has
13 influenced all of us.

14 While I refer to counsel who have
15 been involved here I want to take this opportunity
16 please to record publicly my very sincere appreciation
17 for the openness and co-operation of all counsel.

18 Miss Cronk and I have never been
19 refused any information that we requested. Every
20 effort has been made to make clients and witnesses
21 available to us for interview and preparation and
22 our task in the whole of this long process has been
23 made vastly easier by the helpfulness of counsel.

24 The interests represented by counsel
25 here are indeed disparate, and no less disparate are
the personalities and the styles and the objectives



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2 of counsel. For all that I want to say, sir, because
3 upon the completion of Phase I argument this entire group
4 of counsel will never come together again. I want to
5 say that I am indeed grateful to all counsel for
6 their co-operation and to say that working with them
has been a very pleasurable experience.

7 Over the course of Phase I hearings,
8 sir, occupying some 147 days, we have heard from 51
9 witnesses. Of those witnesses 18 were physicians who
10 were at the Hospital for Sick Children during the
epidemic period so-called, and of those 18 five were
11 staff cardiologists, four were pathologists, two were
12 clinical pharmacologists, others were residents and
13 we heard also from Dr. Carver and Dr. Bain respectively,
14 the current and the former Chief of Paediatrics.

15 We have also heard from five physicians
16 not connected with the Hospital for Sick Children,
17 Doctors Fay, Hastreiter, Kauffman, Mirkin and
Seccombe; from two biochemists with the Hospital;
18 from four epidemiologists and a statistician; from
19 14 members of the Hospital nursing staff during the
epidemic period; three parents and from Mr. Cimbura
21 the Centre for Forensic Sciences; Dr. Bunt a coroner;
22 Dr. Magee a nursing expert; and Dr. Gilmour-Bryson a
23 medievalist, a computer user and compiler of statistics

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2 and a consultant to the Commission.

3 We have had crash courses, even in
4 the case of Dr. Rowe's evidence an extended emersion
5 course in a number of more or less archeaeon disciplines,
6 cardiology, biochemistry, toxicology
7 and pharmacogenetics, resuscitation procedures,
8 nursing practices and procedures and epidemiologic
methods.

9 In each of these areas we have all
10 reached the stage where we recognize most of the
11 words and we can occasionally pronounce them
12 correctly, and even though less frequently use them
correctly.

13 For much of the time, and particularly
14 in the early weeks of our hearings we were all toiling
15 up a very steep learning curve and this has been one
16 of those cases, sir, where the factual evidence as
17 to who did what and when, and who saw what and when,
18 can only make sense in the context of an acquired
19 store of medical and scientific information. But
20 all of that evidence is now before you and the time
21 has come to attempt to sift the truly relevant from the
22 less relevant or irrelevant, and to stitch the relevant
23 evidence into a picture of what if anything occurred
on the cardiology wards of this remarkable Hospital in

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1 the nine month period which began June 30th, 1980.
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3 In preparation for making submissions
4 to you Miss Cronk and I have decided with, I hope your
5 leave, to divide matters between us, and after I have
6 made certain submissions of a general nature I shall
7 ask you to hear Miss Cronk who will review and make
8 submissions with respect to the evidence about
9 digoxin. She will deal with among other things the
10 biochemical evidence as to assay techniques, including
11 the evidence about substance X; pharmacological
12 evidence as to the action of the drug, its distribution
13 within the body; the significance of particular levels
14 of concentrations of the drug in serum and tissue;
15 the problems of interpretation of serum in tissue
16 concentrations; complications of ante or post mortem
17 sampling, the post mortem multiplier effect in fresh
18 and fixed and exhumed tissues. We will deal with the
19 toxicological evidence and the evidence of the
20 clinical pharmacologists as to dosage size and time
21 and route of administration that are compatible with
22 the concentrations recorded in certain of the children
23 whose deaths are under review.

24 When Miss Cronk has dealt with that
25 material I propose then to review the evidence, medical,
pharmacological and circumstantial as to each of the



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2 36 children and to make submissions as to the
3 conclusions that may be reached as to how and by what
4 means each of those children died. I would hope, I
5 hope I have learned to be a little more realistic in
6 my estimates than I was a year ago. I would hope the
7 submissions of Miss Cronk and myself should be
8 completed on Wednesday or perhaps Thursday morning.

9 Now, Mr. Commissioner, in considering
10 what might be helpful to you as you prepare to report
11 on how and by what means the children came to their
12 deaths on these wards in the nine month period under
13 review, I concluded that the appropriate starting
14 point was to construct and outline chronology with
15 some comment as I went along. Chronology of course
16 is frequently of assistance towards an understanding
17 of a chain in events, but if it is to be helpful a
18 chronology I suggest has to do more than list the
19 sequence of events in the order in which they happened.
20 The spacing of events is also very important. The
21 period in which nothing occurred, and I say a very
22 great deal about events which followed each other in
23 rapid succession.

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25 For example, one period of time in
the epidemic period when very little happened and it
was sort of a peaking period of time, one period of



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2 time when very little happened in the way of baby
3 deaths was the daily recurring period between 8:00 a.m.
4 and midnight. Now certainly some children died in
5 that part of the day or evening, and I will refer to
6 them later. In certain cases they were children whose
7 sequence of terminal events had started prior to 8:00
8 a.m. and in some few cases they were children who
9 declined and died during the day and early evening,
10 but deaths in the period from 8:00 a.m. until midnight
11 were really very much the exception in the epidemic.

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CC-1

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EMT/hr 2 And it may be that to discern what was causing the
3 deaths to occur in the night time hours, it is helpful
4 to ask why more children did not die during the day
5 time hours.

6 Similiarly it may be significant that
7 deaths did not occur in a regularly spaced pattern over
8 the epidemic period. I will get into this in more
9 detail later, sir. You will recall I know that July
10 and August saw a lot of deaths. The death rate
11 declined very substantially during the fall and
12 early winter, and then soared in December and dropped
13 off again in January, built up a little in February
14 and reached unprecedented heights in March.

15 It may be that if one can't find an
16 explanation for the troughs in that sequence one might
17 better understand why the peaks occurred.

18 The third example of what I mean,
19 although this is more situational than chronilogical,
20 is the observation of the 33 of the 36 deaths in the
21 epidemic period one or more members of a single
22 nursing team were on duty at the time of death or at
23 the time of the onset of critical symptoms.

24 THE COMMISSIONER: I thought the
25 figure was 35. I may be wrong.

MR. LAMEK: I believe there were three



CC-2

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2 for which no member of the team was on duty and they
3 were Floryn, Heyworth and Leith.

4 THE COMMISSIONER: I don't think that
5 is correct. I may be wrong. I thought members of
6 the team were present for all of them except Leith.
7 In that I may be wrong.

8 Are you saying Heyworth and Floryn -

9 MR. LAMEK: And Leith I believe were
the three.

10 THE COMMISSIONER: Well at the onset of
11 critical symptoms I understand that Susan Nelles and
12 Sui Scott, Marianna Christie and Janet Brownless were
13 all present. I am now looking at Laurette Heyworth.
14 Who was the other one besides David Leith?

15 MR. LAMEK: Floryn.

16 THE COMMISSIONER: Well, I believe
17 that Susan Nelles, Sui Scott and Marianna Christie
were all present.

18 MR. LAMEK: Mr. Commissioner, I can
19 check it. It is not vital for my present purpose but
20 I will check it and get the information absolutely
21 right for you.

22 THE COMMISSIONER: They weren't present
23 at the time of death.

24 MR. LAMEK: At the time of death, yes.

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CC-3

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THE COMMISSIONER: Because Floryn,
the last one - you may be right. At any rate that
was the information that I had whether it is true
or not. Anyway, you have an ally in Miss Cecchetto
so perhaps you will prove me wrong.

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MR. LAMEK: We will find the truth.
Whether it be right or wrong.

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THE COMMISSIONER: All right.

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MR. LAMEK: The point I think was this,
Mr. Commissioner: for over two years it has been
observed that a strong association existed between
so many of the deaths and one or more members of one
nursing team. That has been known for a long time now.
But in attempting to determine whether the deaths
were natural or accidental again it may be instructive
to ask why so very, very few deaths occurred in nine
months in the presence of any other teams.

One would have thought if the deaths
were entirely natural that there would have been a
more random distribution among different nursing teams.
It is not so much that one team was present for many
deaths - that is important - it is deaths did not
occur in the absence of that team which is perhaps of
at least equal significance in attempting to decide
whether deaths are natural or not natural.



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Mr. Percival has established in the course of his cross-examinations the exposure of patients to the one nursing team was 25 per cent. It was one of four teams. Indeed the exposure to the team at night was only 12½ per cent. It spent half of its time working the day shift. I will say more about this later, but I suggest, Mr. Commissioner, it is evidence that you can properly consider when weighing the likelihood that deaths occurred naturally or by accident.

Let me come then to an outline chronology and it reports to be no more than that, sir..

I take it as a starting point. January 1st, 1979, and in that regard I refer to Exhibit 34 which is one of the charts prepared by Dr. Gilmour-Bryson of on-ward deaths for each of five nine month periods.

You will see, sir, the first of those periods begins January 1st, 1979. Now that chart is in raw numbers of deaths. It is not expressed in terms of death rate per number of patients, patient days. Raw numbers to the extent of their value do show that for the four nine month periods recorded other than the epidemic period the number of deaths range between one and seven, and in the two nine month



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2 periods which preceded the epidemic period, deaths
3 on ward were five and six respectively.

4 That I suggest is corroborative of
5 Dr. Rowe's evidence which is found in Volume 10,
6 page 1727, beginning at line 20. I don't ask you to
7 turn to it, sir. I think I can reasonably summarize
8 it. Corroborative of Dr. Rowe's evidence that
9 relatively few patients died on the cardiology ward
itself.

10 Cardiology patients tend to die in
11 the operating room or in the I.C.U., either being in
12 the I.C.U. after surgery or sent to the I.C.U. because
13 their condition on the ward has deteriorated, but
14 only comparatively rarely did a patient die on the
15 ward was Dr. Rowe's evidence. And the numbers
16 disclosed that Dr. Gilmour-Bryson's chart is indicative
17 of that for those earlier periods: five and six
18 deaths in two nine month periods.

19 • When the raw numbers are translated
20 into mortality rates as they were by the authors of the
21 Atlanta Report (that, of course, sir, is Exhibit 324,
22 and in particular I am looking at page 50; take figure 3)
23 there the authors of the report in order to provide a
24 true comparison, three month period to three month
25 period, expressed the deaths in terms of mortality



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2 rates, and the rate as stated at the left hand side of
3 the chart, deaths per 10,000 patient days, and they
4 with the three month period starting in 1976, were
5 recording mortality rates over three month periods
6 ranging from one to four right up until the epidemic
period.

Indeed it is interesting to note both from table 3 to the Atlanta Report and from the text itself, page 6 that the mortality rate did not change materially in the three months immediately following the move from Ward 5A to Wards 4AB. There was not an immediate effect on mortality rates when the service moved to its new quarters on the fourth floor with the larger number of overall beds and the larger number of patients.

23 On April 1st, 1980, the cardiology

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2 service was removed to new quarters on the fourth floor.

3 The aggregate number of beds was increased from 38
4 to 42, and in particular the number of infant beds was
5 increased to 18. New nursing teams were formed;
6 new team leaders were appointed, but as the Atlanta
7 authors point out and their statistics demonstrate,
8 none of that had any apparent immediate effect on the
mortality rate on Wards 4AB.

9 At 6:00 o'clock in the morning on
10 June 30th, 1980, Laura Woodcock died. She was a
11 patient on Ward 4B and she began symptoms - she didn't
12 die at 6:00 o'clock - she began to exhibit cardiac
13 irregularities and a drop in blood pressure, and that
14 marks the beginning of a decline in the course of which
15 at 7:30 in the morning complete AV block was recorded,
16 and subsequently in the early part of the long day
17 shift of June 30th, Baby Woodcock suffered a cardiac
18 arrest from which she could not be revived and she
died as I recall at 9:30 in the morning.

19 It appears from the chart as do the
20 matters that I have just summarized, and in particular
21 page 51 of the chart, at the time of her death there
22 was no ready explanation seen for her sudden decline
23 and arrest. The Coroner was notified. After autopsy
24 the physicians felt more comfortable with the death,

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and I will have more to say about that in detail when we come to discuss the cause of death of Laura Woodcock later, and in the result the death appears to have been accepted as not too surprising.

Then during July five more deaths occur. On the afternoon of July 8th, Baby Alan Perreault died on Ward 4A. Nobody was surprised. Indeed Dr. Rowe's evidence was that the surprise of Baby Perreault was that he lived as long as he did. He was irreversibly sick. A do not resuscitate order was in place. In short the occurrence of Baby Perreault's death a little more than a week after that of Baby Woodcock did not and understandably in the circumstances did not give rise to any questions of concern on anybody's part.

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But in the last ten days of July, four more deaths occurred: Baby Taylor died on Ward 4B on July 27th, and Babies Bilodeau, Dawson and Hoos died on 4A on July 22, 28 and 31 respectively.

Now, Mr. Commissioner, I believe it fair to say that the staff cardiologists although naturally upset by the deaths did not see any cause for concern or for an unusual investigation. I want to say more about that in a few moments but I want to make it clear right now that in making that



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2 observation which I believe to reflect the evidence
3 I intend no critisim of the physicians or of the
4 Hospital Administration. But equally, however, it
5 does appear that the nurses on the floor were looking
6 for answers by the end of July, and that I suggest
7 is entirely understandable.

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8 They were the people who had watched
9 the decline and death of six patients in the period
10 from June 30th to July 31st. Four of those deaths
11 occurred in the middle of the night, a time when
12 in the normal course nurses do not have the comfort
13 of having experienced staff cardiologists available
14 on the floor to deal with crises and to calm their
15 own concerns.

14

15 A ward meeting was held on July 31st,
16 and the note which is found in Exhibit 300, which
17 is the communications book, under the tab 4A
18 Communications on page 5. Reference to this note
19 had been made over and over again so I won't take
the time to read it.

20

21 July 31st was the day that Lillian
22 Hoos had died. She had died earlier that morning.
23 Later in the day there was a discussion of, among
24 other things, recent deaths. It is clear from the
25 note of the meeting that the preliminary results of



CC-10

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2 autopsy on Lillian Hoos were already available. The
3 note on Lillian Hoos at that meeting of July 31st,
4 reads:

5 "The Waterston Shunt was widely
6 patent, p.m. showed chylothorax,
7 questioned cause of death - it has not
8 been settled yet".

9 Clearly the autopsy had been conducted
10 by the time of this meeting and the preliminary
11 results reported back, and it was equally clear that
12 no explanation had yet been found for the death of
13 Lillian Hoos, and no cause of death had been isolated
14 and none had yet been determined on Amber Dawson for
15 whom reference was also made at that meeting.

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2 It appears also from the same page of the
3 4A Communication Book against the date 5/8
4 that sometime on or prior to the 5th of
5 August, Dr. Rowe commented that our recent
6 deaths were all because of anatomy that
7 could not be fixed.

8 Dr. Rowe, it appears, had indeed
9 to the knowledge of the nurses, expressed
10 his view that the deaths were attributable
11 to the irreparable anatomical conditions of
12 the patients.

13 I pause to say, sir, parenthetically,
14 that the applicability of that observation
15 attributed to Dr. Rowe, the applicability of
16 that observation to the case of Amber Dawson
17 is not immediately apparent but, of course,
18 Amber Dawson's anatomy had been fixed. I
19 will return to that point later when I deal
20 with that death in greater detail.

21 By the time Dr. Rowe's comments
22 was recorded in the Communications Book there
23 had been a further death, of course, that of
24 Baby Turner in the wee hours of August 1st.
25 There is no doubt in my submission, sir, on
the evidence you have heard, no doubt but that



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2 first Dr. Rowe sincerely held the belief that
3 he has recorded as having expressed
4 and second, that the nursing staff derived
5 very considerable comfort from Dr. Rowe's
6 stated view, which relieved their natural
7 concern of which you have heard that perhaps
8 some failure of observation or reaction on
9 their part may have contributed to the deaths.

10 On August 8th, page 6 of the
11 Communications Book, sir, there was further
12 news from the autopsy on Amber Dawson, a
13 finding of an abcess on the diaphragm. It
14 may be difficult with the benefit of
15 detachment and hindsight to understand why
16 disclosure of that finding served to relieve
17 the continuing question, as to the cause of
18 Baby Dawson's death, but it appears to have
19 done so. In my submission there is no reason
20 to doubt the truth of the nurses' evidence
21 in that regard or to be critical of what
22 may now seem to have been a too ready acceptance
23 of such an explanation.

24 Between August 9 and August 24
25 four more babies died on the wards, Baby Shrum
on August 9, Baby Monteith on August 19th, Paul



DD-3

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2 Murphy on August 23rd and Velasquez on
3 August 24th, all on Ward 4A. Baby Shrum and
4 Murphy died in the evening, Babies Monteith
5 and Velasquez died in the middle of the night.
6 Again, one of these deaths, and I refer you
7 to the death of Paul Murphy, was not in
8 any way surprising. He was almost 17 years
9 old, but he was sadly, clearly not going to
10 survive. A DNR Order, 'Do Not Resuscitate Order'
11 had been written on that child -- a young man.
12 Varying degrees of surprise were caused by
13 the other deaths. Velasquez' death in particular,
14 caused great concern. He was recovering
15 from surgery. He was soon going to be sent
16 home to St. Lucia. Notwithstanding the comfort
17 that they had derived from Dr. Rowe's assurance
18 early in August that the July deaths had
19 been attributable to the hopeless cardiac
20 conditions of those babies, the nurses again,
21 understandably, continued to be concerned about
22 the number of on-ward deaths. On June 30th
23 to August 24th, eleven children had died
24 in the cardiology wards.

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25 Dr. Rowe, the Head of the
26 Cardiology Division, was apprised of those concerns



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2 and was responsible for the convening of two
3 morbility and mortality conferences held in
4 September, but at each of those meetings
5 there was discussion of babies who had died.
6 I think it is fair to say that the overall
7 thrust from Dr. Rowe and his colleagues at
8 those meetings, was that the children, who
9 had died and whose deaths were discussed, were
10 extremely sick and that the nurses had done
11 everything possible for them. There was
12 also discussion at those meetings of the
13 desirability of an ICU like facility on
14 Ward 4AB to provide closer monitoring and
presumably, possibly a faster response to
early signs of problems.

15

16 In the context of the
17 mortality and morbility conferences, or is
18 the other way around, the one held on
September 5th, in particular, I suggest it
19 is important to say this: looking back again
20 at all the clarity of hindsight, at the
21 discussion at that meeting, as it is recorded
22 in Nurse Radojewski's notes in the Communications
23 Book, one cannot help but be struck by the
24 references of to what we recognize as symptoms

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2 of digoxin intoxication in the case of
3 David Taylor. In page 11 of the Communications
4 Book, in Nurse Radojewski's note of the
5 meeting, David Taylor, Sunday evening, two-thirds
6 of the way down the page, is recorded as
7 having exhibited irregular heart rate, ST
8 depression on an ECG, vomiting, AV block,
9 ventricular fibrillation and, indeed, the
question was expressly noted dig.toxic.

10

11 In the notes of the second
12 mortality and morbility conference -- these
13 are found at pages 16 to 19 -- the written 16,
not the printed. It has got a printed 15 at
14 the top righthand corner.

15

16 The notes on Dion Shrum, which
17 are found on page 18, handwritten, 17 printed,
18 refer to symptoms which again we would now
19 recognize as being perhaps suggestive of
20 digoxin intoxication, irregular pulse, complete
21 heart block, seizure and arrest. It may seem
22 to us, looking back at those notes, that the
23 signs were there to put physicians and nurses,
particularly physicians on notice, on enquiry,
24 as to the possibility of digoxin involvement
25 in the deaths. The evidence has been, of course,



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2 that nobody made any such connection or had
3 any thought that these deaths were anything
4 other than the result of the diseased conditions
5 of the babies in question. Yes, a question
6 was raised about digoxin toxicity with respect
7 to the child at the first meeting, but the
8 death was not considered to have been
digoxin-related.

9 It was clearly recognized
10 that an unusual number, an unusually high
11 number of deaths had occurred over the
12 summer, but according to Dr. Rowe, and there
13 is no reason in my submission to doubt for
14 a moment his account, according to Dr. Rowe,
15 the staff cardiologist, found explanations
16 for that phenomenon in the observations that
17 deaths often come in clusters and the impression
18 that the cardiology wards were populated by
19 younger, sicker patients and in the impression
20 that the wards were understaffed at night.
21 As for that last impression, there has been
22 no evidence of understaffing at night and
23 certainly none to indicate that understaffing
24 may have contributed to the incidents of
25 death. One would have thought that the nurses,



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2 themselves, who were clearly concerned to
3 understand why they were losing patients
4 in unprecedented numbers, and who worried
5 that any action or omission by them was
6 contributing to the high death numbers, one
7 would have thought that the nurses would have
8 been complaining of being understaffed if
9 they felt that that was the case. I have
10 no knowledge or recollection of any such
complaint in the evidence.

11 As for the physicians'
12 impression, they were dealing with a younger,
13 sicker ward population and that therein lay
14 the explanation for the deaths, the great
15 irony of this whole situation is that according
16 to the Atlanta Report their impression was
17 accurate. The ward population, which is found
18 at page 10 of the Atlanta Report, sir, the
ward population in the epidemic period was
19 indeed on the advice of Atlanta's consultants,
20 younger and more seriously sick than in other
21 periods, but again, according to the Atlanta
Report, page 16, table 7 at page 39, the patients
22 who died in the epidemic period were generally
23 less seriously ill than those who died in the
24

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2 been seen there might have been a less ready
3 acceptance of clustering as an explanation.

4 We know from the evidence,
5 I think, particularly the evidence of Miss
6 Coulson and of Mrs. Johnstone, the latter being
7 found in volume 108, pages 4471, 4478, 4481, 4482,
8 we know that some nurses were aware of those
9 common features, deaths at night, presence
10 of the same team, as early as the first week
11 in August of 1980. When Mrs. Johnstone got
12 back from vacation, she talked to Miss Coulson
13 about it. Miss Coulson made those observations
14 to her at that time. Those observations do
15 not appear to have been passed on or become
16 plain to the physicians until a month later.

17 My submission, though, is this,
18 Mr. Commissioner: criticism of the hospital or
19 of the physicians or of the nurses for not
20 having recognized the possibility that something
21 may have been seriously amiss on the cardiology
22 ward is harsh and at bottom, as I say,
23 respectfully, is not particularly relevant to
24 the question upon which you have to report,
25 how and by what means the children died.

26 It is in my submission, doing



DD-10

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2 the best I can to put myself in the context
3 in which they were then looking at these
4 deaths in the fall of 1980, is entirely
5 understandable that the medical and nursing
6 staffs of a hospital would ascribe innocent
7 explanations to the multiple deaths which
8 occurred. The idea that something other than
9 innocent events might be occurring would simply
not occur to them.

10 We heard this from concerned
11 members of the hospital staff, even at late
12 stages of the epidemic period. Miss Coulson
13 even in December and January, when she could
14 no longer accept that bad luck and coincidence
15 were explanations for the deaths, even when she
16 felt in her words that "something was going on",
17 she couldn't conceive or perhaps bring herself
18 even to contemplate, the possibility that
19 somebody might be harming patients. She racked
20 her brain and speculated about problems of
21 IV solutions. She thought of any crazy thing
22 rather than grapple with the other possibility.
23 It was not one that came to her mind or she
24 did not allow to come to her mind. Her evidence
25 is found in volume 106, pages 4029 to 30.



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Mr. Commissioner, I am

about to return to the chronology in the fall
of 1980. Is this a good time?

THE COMMISSIONER: We will

take 20 minutes.

--- Short Recess



EE-1

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DM/hr

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--- Upon resuming

3 THE COMMISSIONER: Yes, Mr. Lamek.

4 MR. LAMEK: Thank you, sir. I was
5 about to return to the chronology following the
6 references to the mortality and morbidity conferences
7 in September. In the fall of 1980 the mortality
8 rate clearly dropped from the level that it had
9 reached in July and August; two children died in
10 September, three in October, one in November, and
11 after the mortality rates of the summer months those
12 three months no doubt seemed to be a return to
13 relative normality. Dr. Rowe was away in the Fall.
14 When he left he expected further mortality and
15 morbidity conferences to be held, they were not.
16 He returned earlier in December and found there had
17 been no more conferences. He expressed himself
18 gently here, I suspect he expressed himself rather
19 less gently in the Hospital at the time.

20 In December the number of deaths returned
21 to the same high level that had been experienced in
22 July and August, five children died in the Wards in
23 December; Onofre on December the 9th on Ward 4B;
24 MacDonald, December 13th, Gosselin, December the 18th,
25 Lombardo, December the 23rd, all on 4A, and Belanger
on December the 28th, normally on Ward 4B at the time



E-2

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2 of the wards combination, and the concerns about the
3 number of deaths were understandably revived. As I
4 have said it was about this time that Miss Coulson
5 on her evidence, she was one of the night nursing
6 supervisors you will remember, she said she had to
7 face up to the fact that she could no longer accept
8 coincidence as an explanation for so many deaths in
the presence of the same nursing team.

9 It was in December that Dr. George
10 Trusler the cardiovascular surgeon spoke to Dr. Rowe
11 and then wrote to him Exhibit 64, the letter of
12 December the 15th, 1980. Now Dr. Trusler's concern
13 was that he and his surgeon colleague, Dr. Williams
14 were getting patients through surgery, through the
15 I.C.U. back to the ward only to have them die on the
16 ward at the time when he, Trusler, regarded them as
17 being out of danger. He listed seven patients who
18 died in such circumstances and plainly he was concerned
19 to find an explanation. Now when Dr. Trusler wrote
20 that letter of December 15th, there had been two
21 ward deaths in December, we had Onofre and we had
22 MacDonald. By the time Dr. Rowe replied on December
23 the 29th and his reply is part of Exhibit 64, by
24 December the 29th there had been three more ward
25 deaths, two of them were Babies Lombardo and Belanger



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2 who died six and five days respectively after surgery.
3 Dr. Rowe when he responded to Dr. Trusler's letter
4 was forthright enough to say that Dr. Trusler's
5 list of seven patients could be amplified without
6 much trouble. He raised questions in his letter
7 about the need for facilities for closer monitoring
8 of babies that who were at risk, and about the need
9 for surgical reintervention in certain cases. In
10 the result a meeting was convened on January the 11th,
11 1981, to review the deaths that had occurred since
12 the previous summer, and the minutes of that meeting
13 are Exhibit 65, sir.

14 At the meeting 20 deaths were reviewed,
15 and I put the word reviewed in oral quotation marks.
16 Fifteen of the deaths were described as unexpected;
17 although you may recall Dr. Rowe's evidence as found
18 in Volume 12 on page 2054 that by the term "unexpected"
19 he meant only that a death was not an inevitable one
20 and that some intervention might have been possible
21 to prevent it.

22 Now, I said I put the word reviewed in oral
23 quotation marks I mean that the 20 deaths were not
24 individually discussed at that meeting. There was
25 no review of particular charts or particular patients
at the meeting, and there was no discussion of the



EE-4

1 cause of each death. In my submission it is not
2 unfair to say that the meeting of January 11th, 1981
3 was held on the basis of certain assumptions which
4 were not questioned or challenged or changed at the
5 meeting. The first was that each and every one of
6 the 20 deaths had been a natural death, and certainly
7 there is no indication either in the minutes or in
8 Dr. Rowe's evidence to suggest that that assumption
9 was challenged. Second, the assumption, the conclusion
10 indeed that perhaps in certain cases more prompt re-
11 operation might have saved the patient and in other
12 cases more intensive monitoring facilities might have
13 saved the patient. In my respectful submission the
14 major object of that meeting was to gather support
for the creation of an intermediate I.C.U.

15 I put that light on the meeting because
16 that in my submission serves to explain, or make more
17 comprehensible, the events that occurred a few days
18 later. On the early morning of the day that the
19 meeting was held Janice Estrella died. Her death
20 was reported in the early hours of the morning by
21 telephone to Dr. Freedom, who ordered that a blood
sample be drawn and an autopsy for digoxin assay .
22 That is the evidence of Dr. Taylor the pathology
23 resident who did the Estrella autopsy and it is found
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in Volume 43, pages 8610 to 8611 and 8614. When Dr. Freedom gave evidence here he said he had no recollection of having received a call or having given such an order. In my submission the evidence of Dr. Taylor on the point should be accepted for these reasons.

In the first place Dr. Taylor's evidence makes sense. He said that Freedom told him in giving the order that Estrella had had high digoxin levels during her life, as indeed she had, and he wanted to know the post mortem concentrations. Second, on other occasions, Dr. Freedom had spoken to others of having received a call from Taylor and that he asked Taylor to obtain a post mortem blood sample for digoxin assay. He apparently said that to Mr. McGee, the Crown Attorney, and that is found in Volume 30, pages 548-549.

THE COMMISSIONER: If I could just look at that.

MR. LAMEK: It was put to him by Mr. Percival I believe, or perhaps Mr. Hunt, I am not sure, 548-549, I clearly have the page wrong, I clearly have the page wrong, it can't be 548-549 I will find it for you, sir.

THE COMMISSIONER: We have 29.



EE-6

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MR. LAMEK: The reason I hesitated in reading it, my note is a little unclear and I obviously have it wrong and I will provide you with that one, sir.

You will also recall that Dr. Freedom in interview, the tape of which was played here, had told a CBC radio reporter that he was awakened by a call from Taylor and in a half awake state ordered the digoxin level in the belief that Estrella was still alive. He put it to us, or gave it to us that that had been a reconstruction of a possibility that he had given to the CBC reporter, and I think fairly the transcript of the interview, or the tape of the interview did not bear out that it was given as a hypothetical possibility but more as a matter of recollection. For those various reason what he said to Mr. McGee at an earlier stage, he apparently said to the CBC and the fact that Taylor's evidence has a ring of plausibility about it, Freedom made his request for the reason that Taylor says he gave, lead in my conclusion to the probability that Taylor's evidence is the correct evidence and that Dr. Freedom's inability to recall doesn't really deny the fact that matters happened as Dr. Taylor said they did. It may not matter hugely, but I am obliged to say that



EE-7

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2 it is odd that Dr. Freedom's memory should apparently
3 be so variable on the event.

4 In any event blood was drawn as we
5 know, not at but after autopsy, from the pelvic
6 cavity, so called gutter blood and was milked from
7 a leg vein. Some days later according to Dr. Taylor
8 it was within a week, that I believe is found at
9 Volume 43, page 8660, according to Dr. Freedom
10 some two to three weeks, and that is in Volume 29
11 at 5442, some time after the events the result
12 was received by Taylor from the lab and the results
13 were greater than 4.7 and 72 nanograms per millilitre
14 respectively. Now curiously Dr. Taylor did not go
15 rushing off in search of Freedom with that rather
16 startling news. His own evidence found in Volume
17 43 at 8660 to 8661 is that he bumped into Freedom
18 in the Hospital cafeteria and discussed the results
19 with him there. He did not mention the level of
20 4.7. He told him only about the 72 nanogram level
21 and he says that he told Dr. Freedom that he, that
22 is Taylor, thought it was a crazy number and he said
23 the specimen had been obtained in such a way as it was
24 likely to have been contaminated. Again, according
25 to Dr. Taylor's evidence, Dr. Freedom's response was
that the 72 level was likely an error or an artifact



EE-8

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2 and he said that Taylor should check it out, that is
3 also found in Volume 43 at pages 8663-8665; Taylor
4 did not check it out.

5 Now Dr. Freedom in his version of the
6 conversation didn't say that Taylor had raised the
7 possibility of contamination but he does say that he
8 had a very casual conversation with Taylor about the
9 matter. In Volume 29 at 5543 and following he says,
and the words are interesting:

10 "He asked me in sort of a casual fashion
11 what do I think of the level of 72 in
12 Janice Estrella. My recollection of
13 the conversation was 'Jesus that value
14 is so out of hand it is either a
15 calculation error, a decimal error,
16 a problem with the biochemistry or
17 perhaps the sample had been drawn from
a contaminated source.'"

18 He says he told Taylor that Taylor should check back
19 with biochemistry and get back to him. Dr. Freedom,
20 on his evidence did not make any inquiries about the
21 reading; Taylor didn't make any inquiries and he
22 didn't get back to Freedom and Freedom didn't follow
23 up. The end result the recorded level on Janice
24 Estrella disappeared into limbo never to reappear until

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E-9

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2 March when the Pacsai level threw the Hospital into
3 a turmoil, it just was dropped.

4 Now, on the face of it, Mr. Commissioner,
5 the evidence as to the way in which the sample came
6 to be drawn from Baby Estrella, and as to the apparently
7 extraordinary response to the level reported by the
8 lab, on the face of it that is startling evidence.
9 One might well suggest that the whole episode
10 manifested a rather cavalier attitude to the
11 circumstances surrounding the death of that child.
12 I suggest again that it is difficult to be too
13 critical because further inquiry would no doubt have
14 revealed the suspect source of the sample in which
15 that 72 level was recorded, and that having been
16 discovered I suggested that it is probable that the
17 level would not have raised a general hue and cry,
18 or clicked on any lights to reveal other possible
explanations for the spate of ward deaths that
had occurred.

19 I come back to the meeting of January
20 the 11th and suggest that by the time of that meeting
21 the physicians and surgeons, by the time they left
22 that meeting, had really reached a consensus, a
23 conclusion, as to why so many children had died.
24 Without attempting to justify or condemn the events
25



EE-10

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2 following the death of Baby Estrella, I suggest one
3 could reasonably infer that the attention of the
4 medical men had become so focused on the cause of
5 and solution to the problem as they had defined it,
6 that attention was not likely to be diverted by anything
7 short of the clearest and most compelling evidence
8 pointing in another direction.

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EMT/cr
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The implications of Janice Estrella's
72 nanogram level if that level were accurate were
obviously too horrendous to contemplate. The reported
level had to be wrong. She had not been on the drug
for four days, and it was assumed to be wrong without
any further enquiry.

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Perceptions would not change until
Dr. Costigan took the Pacsai levels to Dr. Carver on
March the 18th, two months later.

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THE COMMISSIONER: To a certain extent
this has been dealt with already, and I am referring
to the Dubin Report at page 158. I don't know whether
you are saying more than is said here:

"However, the result of the digoxin
level test was received at the very
time that studies were underway
relating to the increased number of
deaths on the cardiac ward. Under
those circumstances caution at least
should have dictated further enquiry.

There is some suggestion that a further
test was directed. No such test was
made and there appears to have been no
follow-up. We think that something
further should have been done before



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2 "the result of that test was rejected
3 out of hand. In future we think
4 further enquiries should be made of
5 laboratory results which indicate
6 something out of the ordinary even
7 under circumstances which would render
8 the original results questionable."

9

10 And do you go any farther than that?

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12 MR. LAMEK: I don't think I go any
13 farther than that at all, sir, no. Indeed the only
14 thing I may have added to that, added by way of a
15 gloss upon it, is the suggestion that as a result of
16 the January 11 meeting the prior deaths were no
17 longer a matter of question for the doctor. Perhaps
18 they should have been. They weren't. They decided
19 what the problem had been and they decided what they
20 thought the solution was and they were setting about
21 working on the solution, the intermediate ICU.

22

23 There was after January 11 perhaps
24 less of a propensity to show concern for the prior
25 deaths than there may have been before that meeting.
I don't attempt to justify that, but I don't particularly
condemn it either. I merely try to regard it as a
fact put in the chronological sequence of events, and
the number was a gross number. No one had ever seen



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3 a number like 72. The sadness is that on the one
2 hand I suppose nobody followed it up, although
3 instructions were given by Freedom that it be followed
4 up. Taylor didn't do it. Freedom didn't do it.
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6 THE COMMISSIONER: What was Taylor to
follow up?

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MR. LAMEK: Well, one of the possibilities that Freedom had raised was a possibility of a decimal error: Had they expressed the answer wrong? He could at least have found that out. That he could have done. Taylor said he had raised the possibility of contamination. Whether some explanation was made of that or could have been made of that I do not know.

Dr. Freedom was not particularly precise about what he had in mind by "check it out", but "check it out" seems to refer to the kind of mathematical calculation placement of a decimal point that he had listed as one of the possible explanations for that very high number. It is perfectly clear, however, that whatever he had in mind nothing was done.

Now on the other hand I say had something been done and had there been some explanation of the way in which the sample was drawn then what Taylor said he told Freedom at the time, that the



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method of taking the sample just may well have produced a contaminated sample, would have led them in any event to disregard the result. After all the other result of which Freedom was unaware at that time, the greater than 4.7 was in a sense not inconsistent with the earlier levels in Estrella. It was higher than the last recorded ante mortem level in her which was 4.7 on the nose, but on the other hand a post mortem sample --

THE COMMISSIONER: I don't think at that time they knew the difference between a post mortem and ante mortem sample. I don't think anyone --

MR. LAMEK: They may not have.

THE COMMISSIONER: - possibly the pharmacologist may, but certainly the cardiologists did not.

MR. LAMEK: The pharmacologists may well have said to them at that stage, okay, but 4.7 and greater than 4.7 doesn't mean anything; levels rise after death.

It may have been that even had enquiries been made a blank would have been drawn and a conclusion would have been reached in any event that a 72 level could have been disregarded. The



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2 sadness is that no enquiry was made.

8 Now no resuscitation was attempted of
9 Bruce Floryn. He was a very sick child and not
10 expected to survive. Codes were called on the other
two. They could not be resuscitated.

19 From March 7th until March 22nd nine
20 children died on the cardiology wards. All in the
21 small hours of the morning except for Pacsai who got
22 into trouble then and died some hours later in the
23 ICU. All in the presence of one or more members of the
same nursing team.



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Just for the sake of recollection
those children were: March 7th, Warner, 3:45 in the
morning. March 8th, Hines, 6:00 o'clock in the morning.
March 9th, Gionas, 1:45 in the morning. March 12th,
Manojlovich, 3:35 in the morning. Same night Pacsai
10:10 in the morning. The next night, March 13th,
Inwood, 3:00 o'clock in the morning. March 18th,
Gardner, 4:25 in the morning. March 21st, Miller,
3:27 in the morning and March 22nd, Cook, 4:56 in the
morning. And by mid March similarities between these
deaths, common thread patterns were becoming clear
to everybody.

The night time deaths in a narrow
time band had by now been so clearly seen that there
was talk of the witching hour. If a night reached
four or five o'clock without incident the staff breathed
a sigh of relief. Coming to work on the long night
shift was an unattractive thing. But it wasn't until
March 18th that someone thought there might be some-
thing terribly wrong on 4A/B.

That was the day that Dr. Costigan,
20 Chief Resident, went directly to the Chief of Paediatrics,
21 Dr. Carver, to tell him the terribly disturbing news
22 about Kevin Pacsai's digoxin level. You will recall
23 I know, sir, the circumstances in which Dr. Costigan

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had ordered digoxin assays to be done on Pacsai.

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He was puzzled by Pacsai's elevated serum potassium in the hours prior to the baby's death, he was concerned by cardiac symptoms that were suggestive of digoxin intoxication, and about the possibility that steps that he had taken to lower the potassium level might have aggravated the effects of the digoxin.

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Costigan ordered a digoxin level to be measured. He went in search of the remnants of a blood sample that had been drawn ante mortem for a complete blood count, and he furnished that to the biochemistry department for digoxin assay. That evidence is found in Volume 45, page 45 and following.

5

Interestingly, entirely independently of Dr. Costigan's effort, Dr. Cutz the pathologist having seen two references in the chart to possible digoxin toxicity, and those are the references of Dr. Costigan himself on the night the child died, decided at autopsy to take the unprecedented step on his own motion of drawing blood for post mortem digoxin assay. That evidence is found in Volume 42 at pages 8538 to 9. Those results became available and Dr. Costigan took them to Dr. Carver on the morning, Wednesday, March 18th.

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Dr. Carver's response was in my

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2 submission all that one could ask for. He immediately
3 ordered an investigation into the digoxin on the ward,
4 to check if it was indeed the correct strength
5 preparation, and an investigation into the possibility
6 of a drug error having produced the recorded levels
7 in Pacsai, and he told Dr. Fowler to advise the coroner
8 of this development.

9 As he told us in Volume 35, page 8607
10 he did not at that time think that deliberate overdose
11 might have produced the levels. Clearly there was
12 something to be investigated. His mind turned
13 initially to innocent explanations.

14 But from that point events began
15 to move very fast indeed. Dr. Mancer the pathologist
16 who had been in charge of the Estrella autopsy learned
17 from Dr. Cutz of the Pacsai digoxin levels, and on
18 March 20th took it upon himself to report the Estrella
19 information to the coroner. That reference is Volume
20 40 in Dr. Mancer's evidence, pages 8083 to 8085. In
21 the result a meeting was called for the afternoon of
22 Saturday March 21 between Dr. Carver, senior cardiologist
23 in the Hospital, other Hospital staff, coroner and
24 police, to discuss the Estrella and Pacsai cases.

25 Dr. Carver believes that it was on
26 Saturday that he received an oral report from Dr.



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2 Fowler on the negative results of his investigation
3 into the possible innocent causes of the Pacsai levels,
4 and it was then for the first time that the possibility
5 of foul play occurred to him.

6 Although Dr. Carver did not know it
7 until after he returned to the Hospital on Saturday
8 afternoon following a meeting with the coroners,
9 Allana Miller had died in the early hours of that very
10 day, and Dr. Costigan learning of the death when he
11 came into the Hospital early that day had ordered
12 blood drawn at autopsy for digoxin assay.

13 He so told Dr. Carver late in the
14 afternoon of Saturday March 21st, and he told him
15 because it was a weekend that the assay wouldn't be
16 done until Monday. Apparently Dr. Costigan as Chief
17 Resident did not have the clout to get the process
18 going that evening. Dr. Carver as Chief of Paediatrics
19 did.

20 A biochemist was brought in, did the
21 assay that evening, and a level of 72 nanograms was
22 reported at about 8:00 p.m.

23 Dr. Carver instructed Dr. Fowler to
24 report the matter to the coroner, and he immediately
25 convened a meeting at which Drs. Fowler, Costigan
and Mounstephen were present, a plan of action was



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2 formulated and immediately implemented to protect
3 patients by inventorying and securing all digoxin
preparations on the wards.

Later Dr. Carver and Dr. Fowler met with Dr. Tepperman the coroner who arrived about 11:00 o'clock. They told him of the steps that had been taken about locking up digoxin. There was a discussion as to whether the nursing team which had been on duty for each of the three deaths in issue (that is Estrella, Pacsai and Miller) should be relieved of their duty. It was decided that night that they should not.

12 Dr. Carver left the Hospital some time
13 after midnight and he went home. The anguish of the
14 night was not over for him yet. Five o'clock on the
15 morning of Sunday, March 22nd, he received a call from
16 Dr. Fowler reporting the death of Justin Cook, and it
17 was decided in the course of that telephone conversation
that blood should be drawn for digoxin assay and for
a drug screen.

19 Dr. Jedeikin was instructed by Dr.
20 Carver to take samples of the contents of the IV bag
21 for digoxin assay, and Dr. Fowler was instructed to
22 report the Cook death to the coroner. Biochemistry
23 work on the Cook samples was done on an urgent top
priority basis and Cook's digoxin levels were known



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later in the morning, and on Sunday the police were
in the Hospital beginning their investigation.

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We know that further measures were taken to protect the patients. The Trayner team was told not to come into work that night. Supervisors were on the ward floor carrying the keys to the narcotics cupboard where the digoxin was now kept, supervising all medication and administrations. Digoxin levels were done on all patients on the cardiology wards. Steps were also taken then or shortly afterwards to move patients off the wards where feasible and to cancel elective admissions. In short, once the possibly ugly features of the situation were last recognized the hospital, under the leadership of Dr. Carver, responded vigorously and fully to the situation.

Mr. Commissioner, you have heard evidence of discussions and meetings in the week of Monday, March 23rd, which, in large measure, more closely concern Phase II than they do in Phase I. I don't propose to take the time here to refer to those matters.

One very important observation should be made, however, relating to the period from and after March 22nd, 1981, the mortality rate immediately reverted to its pre-summer 1980 historic level. There was not to be another



GG.1.2.

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2 death giving rise to similar concerns until
3 that of Gary Murphy in April of 1983, about
4 which I shall say some more later.

5 On the information that has
6 been available to us here, sir, such deaths,
7 as occurred on Wards 4A and 4B from and after
8 March 22nd, 1981, have not been clustered in
9 the middle of the night. There is every
10 indication whatever had been happening on
11 those wards from the summer of 1980, until
12 March 22nd, 1981, came to an abrupt end following
the death of Justin Cook.

13 And that, sir, is in very
14 broad outline only a chronology of the events
15 with which we have been concerned. I referred
16 earlier to the spaces between events and the
17 timing of events. There are, as you know, several
18 patterns in the events which we are considering.
19 One pattern, though, is apparently lacking, the
20 spacing of deaths week in and week out, month
21 in, month out, and on the face of it discloses
22 no particular rhythm or pattern. June 30 to
23 July 31, six deaths; the month of August, five
24 deaths; the month of September, two; October, three;
25 November, 1; December, 5; January, 1; February, 3;



GG.1.3

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2 March until March 22, 10. Now, if all of those
3 deaths were natural deaths, resulting from
4 the diseased states of the children, one would
5 not be too surprised to see a random
6 distribution, an uneven distribution of deaths
7 from month to month, and taken in isolation,
8 the month to month distribution that I have
9 just recited does appear to be random, and on
10 the face of it, therefore, taken in isolation,
11 might arguably support a natural death theory.

12 There are matters in my
13 submission that give one pause in accepting any
14 such argument, even leaving aside the findings
15 of very high digoxin levels in some children.
16 If by purely natural events the month to month
17 incidents of death appears to be random and
18 unstructured, one asks, why does not one find
19 a comparable randomness of distribution of
20 death during all hours of the day or all hours
21 of the night and between all nursing teams
22 working on the wards? The very fact that the
23 hour of day distribution and the personnel
24 distribution do not appear to be random, makes
25 one at least enquire, I suggest, whether the
randomness of the month to month distribution is



GG.1.4

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2 more apparent than real. On the other hand,
3 if a conscious mind and will were at work
4 to produce these baby deaths perhaps there is,
5 indeed, a pattern to be discerned, even in
6 the month to month incidents of deaths.

7 I make this submission, sir.

8 It is rather a no-lose argument that I am
9 making. Even if one cannot discern a pattern
10 in that month to month incident, that does
11 not necessarily negate the premise that a
12 conscious mind and will were at work. If one
13 postulates a baby killer, one has to acknowledge
14 that the thought processes of such a person
15 might not be what most of us call rational.

16 It may be too great an assumption to think
17 that any rational mind would act according
18 to a pattern that more rational minds can discern,
19 but operating for the sake of analysis on the
20 premise of a deliberate killer, there are, in
21 my submission, notable gaps or lulls in the
22 deaths to be considered. The first one I am
23 afraid I can cast no light upon and that is
24 the period prior to June 30th, 1980. Why did
25 our assumed killer, making that assumption for
the sake of this analogy, why did that person



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2 only begin his or her activities then? Why
3 not before?

4 I know from the evidence of
5 no one, who had known continuing opportunity
6 and access to these babies who first came to
7 the wards of the hospital May/June of 1980.
8 I do not know and certainly I have no speculation
9 that I wish to offer, as to what it was that
10 triggered the assumed killer into action.
11 So that period of inactivity is, for all that
12 I know, utterly unexplained.

13 Two: the lull from August 24th,
14 until the end of November. It has been pointed
15 out in the course of the evidence that Mrs.
16 Trayner was away from August 24th until September
17 24th. What of the ensuing two months? It may
18 be important to bear in mind that the summer
19 deaths had raised sufficient concern and
20 questions in the minds of, especially nurses, that
21 mortality and morbility conferences were arranged.
22 We know that two such conferences were held in
23 September. One may infer perhaps that while those
24 conferences were going on, while deaths were
25 being scrutinized and discussed, the person
responsible for the deaths might have thought



G.1.6

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it prudent to lie low, but even if that
be so, what about October and November when
no M & M conferences were held?

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GG.2.1

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The conferences were not held but you will recall Dr. Rowe's evidence that he intended and expected that they would be. He was away much of the fall, from October 15th until December 7th, and he was distressed upon his return to learn that no further conferences had been held.

Now, unless our assumed killer was the person responsible for arranging the M & M conferences, and that is a double speculation without a shred of foundation, the fact that there would be no further conferences in the fall of 1980 was not known to anyone. It was expected that the conferences would continue, that the scrutiny of deaths would continue, that the discussion of deaths would continue, and until it became clear that the fuss and discussion and scrutiny process was over and the heat was off perhaps our assumed killer would continue to lie low and that may be the explanation for the relative inactivity in the fall until December of 1980.

Dr. Rowe came back in early December. There was clearly no announcement that the M & M conferences would resume and the



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2 deaths resumed December the 9th and five
3 occurred during December and, therefore, the
4 gap or lull in the fall may thus be understandable.

5 After the spate of deaths in
6 December there was again a lull in January with
7 one death in February with three before the
8 explosion in March. Is there any explanation
9 for that lull? There may indeed be one..

10 Although the M & M conferences
11 did not resume in the form in which they had
12 been held in September there was a large conference
13 held on January 11th where 20 deaths were to
14 be discussed. Now, that that meeting was going
15 to be held was not even known to the convenor
16 of the meeting, Dr. Rowe, until apparently
17 December the 29th when he wrote his letter to
18 Dr. Trusler. It is not even clear from the
19 evidence that we have heard that the rank
20 and file staff of the hospital employees, and
21 I mean no disrespect, and I include people
22 working on the front line, nurses on the floor
23 and so on, no indication they even knew the
24 meeting was to be held. It does seem that it soon
25 became known that the meeting had been held, because there was discussion of this



G.2.3

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2 proposal of intermediate ICU.

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4 It may not be mere coincidence
5 that Janice Estrella died on January 11th,
6 the very day of the meeting and there wasn't
7 another death that month. It may be entirely
8 possible again that that was because the heat
9 was seen to be back on and deaths were once
10 again under scrutiny.

11

12 It is difficult to find any
13 explanation for the huge number of deaths in
14 March 1981. One might think that seven weeks
15 or so having passed from the January 11th meeting,
16 perhaps a discussion of what had gone on there
17 had now died down, someone may have been
18 interested in re-activating these deaths, why
19 to the extent they occurred in March is something
20 there can be no informed speculation about.

21

22 But there were no deaths after
23 the arrests of Susan Nelles and no deaths after
24 that of Cook and certainly not after the arrest
25 of Miss Nelles. There may be at least four
more or less rational explanations for that,
but let me stress there is absolutely no
evidence for any of the first three of these.

26 The first possible explanation

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GG.2.4.

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when one is considering the rational possibilities, is that the arrest of Miss Nelles removed the culprit. That would be one possibility. The second would be that someone other than Miss Nelles was the culprit, but found the situation was now so hot and dangerous and the risk of discovery so high that the deaths now had to stop. The third would be that someone other than Miss Nelles was the culprit, but with the arrest of Miss Nelles had achieved his or her objective of implicating Miss Nelles. There was no need to continue the deaths.

Fourth, perhaps most likely,

changed conditions on the ward: secured digoxin, double signing, supervisors, dig. levels becoming routine made it impossible to continue without inviting almost certain detection.

In short, Mr. Commissioner, with respect to the gaps or lulls in the deaths and the apparent lack of any pattern, rhyme or reason and the timing of deaths from month to month, my submission is there may well be not a pattern, but a reason for the uneven sequence of deaths.

That brings me, sir, to general



GG.2.5.

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2 review of certain theories that have been
3 advanced from time to time and attempts to
4 explain what happened. It may be that rather
5 than beginning at 25 past 4 I could do it at
6 10 o'clock in the morning?

7

THE COMMISSIONER: Yes.

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MR. LAMEK: Thank you, sir.

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THE COMMISSIONER: We will
rise until 10 o'clock tomorrow.

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---Whereupon the Hearing adjourned at 4:25 p.m.
until 10:00 a.m., Tuesday June 5th, 1984.

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